

SUBCHAPTER A—PROCEDURE AND RULES OF PRACTICE

PARTS 300–302 [RESERVED]

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

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AUTHORITY: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 (Seventh and Tenth), 1828, 1831e, 1831o, 1831p–1; 15 U.S.C. 1607.

§ 303.0 Scope and definitions.

(a) *Scope*. This part prescribes:

(1) Where applications, requests, and notices required to be filed by statute or regulation (hereinafter, collectively, applications) should be filed;

(2) The contents of the application when the application is to be made by letter;

(3) The location where forms and instructions may be obtained when the application is to be made on a form. This part also prescribes procedures to be followed by both the FDIC and applicants during the process of consideration of an application; and

(4) Finally, this part sets forth delegations of authority by the FDIC's Board of Directors to the Director of the Division of Supervision and the Director of the Division of Compliance and Consumer Affairs, to their associate directors, to the regional directors and deputy regional directors of the Division of Supervision, and to the regional managers of the Division of Compliance and Consumer Affairs to act on certain applications and other matters pursuant to the conditions, where applicable, that limit such delegations.

(b) *Definitions*. For purposes of this part:

(1) *Corporation* or *FDIC*. The terms *Corporation* or *FDIC* shall mean the Federal Deposit Insurance Corporation.

(2) *Division* or *DOS*. The terms *division* or *DOS* shall mean the Division of Supervision, or in the event the Division of Supervision is reorganized, such successor division.

(3) *DCA*. The term *DCA* shall mean the Division of Compliance and Consumer Affairs, or in the event the Division of Compliance and Consumer Affairs is reorganized, such successor division.

(4) *Director (DOS)*. The term *Director (DOS)* shall mean the Director of the Division of Supervision, or in the event the title of Director of the Division of Supervision becomes obsolete, any official of equivalent or higher authority.

(5) *Director (DCA)*. The term *Director (DCA)* shall mean the Director of the Division of Compliance and Consumer Affairs, or in the event the title of Director of the Division of Compliance and Consumer Affairs becomes obsolete, any official of equivalent or higher authority.

(6) *Associate director*. The term *associate director* shall mean any associate director of the Division of Supervision or the Division of Compliance and Consumer Affairs, as appropriate, or in the event the title of associate director becomes obsolete, any official of equivalent authority within the respective divisions.

(7) *Regional director*. The term *regional director* shall mean any regional director of the Division of Supervision, or in the event the title of regional director becomes obsolete, any official of equivalent authority within the Division of Supervision.

(8) *Deputy regional director*. The term *deputy regional director* shall mean any deputy regional director of the Division of Supervision, or in those FDIC regions where there is no deputy regional director, an assistant regional director. In the event the title of deputy regional director or assistant regional director becomes obsolete, the term deputy regional director shall mean any official of equivalent authority within the same FDIC region of the Division of Supervision.

(9) *Regional manager*. The term *regional manager* shall mean any regional manager in the Division of Compliance and Consumer Affairs, or in the event the title of regional manager becomes obsolete, any official of equivalent authority within the Division of Compliance and Consumer Affairs.

(10) *Associate General Counsel for Compliance and Enforcement*. The term *Associate General Counsel for Compliance and Enforcement* shall mean the head of the Compliance and Enforcement Section of the Legal Division of the FDIC, or in the event the title of Associate General Counsel for Compliance and Enforcement becomes obsolete, any official of equivalent authority within the Legal Division. The authority delegated to the Associate General Counsel for Compliance and Enforcement may be exercised by the Deputy General Counsel for Supervision and Legislation or a counsel in the Compliance and Enforcement Section in the Washington, DC office.

(11) *Regional counsel*. The term *regional counsel* shall mean a regional counsel of the Legal Division, or in the event the title of regional counsel be-

comes obsolete, any official of equivalent authority within the Legal Division. The authority delegated to a regional counsel may be exercised by a deputy regional counsel, a counsel, or any official of equivalent or higher authority in the Compliance and Enforcement Section of the Legal Division.

(12) *Appropriate FDIC region, appropriate FDIC regional office, appropriate regional director, appropriate deputy regional director, and appropriate regional counsel* shall refer to the FDIC region, and the FDIC regional office, regional director, deputy regional director, and regional counsel, of the FDIC region, which the FDIC designates as follows:

(i) When an institution or proposed institution that is the subject of an application, request, submittal, notice, or administrative action is not or will not be part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the institution or proposed institution is or will be located; or

(ii) When an institution or proposed institution that is the subject of an application, request, submittal, notice, or administrative action is or will be part of a group of related institutions, the appropriate region for the institution and any individual associated with the institution is the FDIC region in which the group's major policy and decision makers are located, or any other region the FDIC designates on a case-by-case basis.

(13) *Act*. The term the Act shall mean the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(14) *Institution-affiliated party*. The term *institution-affiliated party* shall have the same meaning as provided in section 3(u) of the Act (12 U.S.C. 1813(u)).

(15) *Notification to primary regulator*. The term *notification to primary regulator* shall mean a notice required under section 8(a)(2)(A) of the Act (12 U.S.C. 1818(a)(2)(A)).

(16) *Section 8(a) order*. The term *section 8(a) order* shall mean an order terminating the insured status of a depository institution under section 8(a) of the Act (12 U.S.C. 1818(a)).

(17) *Notice of charges*. The term *notice of charges* shall mean a notice of

charges and of hearing setting forth the allegations of unsafe or unsound practices and/or violations and fixing the time and place of the hearing issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(18) *Section 8(b) order and cease-and-desist order.* The terms *section 8(b) order* and *cease-and-desist order* shall mean a final order to cease and desist issued under section 8(b) of the Act (12 U.S.C. 1818(b)).

(19) *Section 8(c) order and temporary cease-and-desist order.* The terms *section 8(c) order* and *temporary cease-and-desist order* shall mean a temporary order to cease and desist issued under section 8(c) of the Act (12 U.S.C. 1818(c)).

(20) *Section 8(e) order.* The term *section 8(e) order* shall mean a final order of removal or prohibition issued under section 8(e) of the Act (12 U.S.C. 1818(e)).

(21) *Section 8(e)(3) order and temporary order of suspension.* The terms *section 8(e)(3) order* and *temporary order of suspension* shall mean a temporary order of suspension or prohibition issued under section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)).

(22) *Section 8(g) order.* The term *section 8(g) order* shall mean an order of suspension or prohibition issued under section 8(g) of the Act (12 U.S.C. 1818(g)).

(23) *Remote service facility.* The term *remote service facility* shall mean an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility where deposits are received, checks paid, or money lent.

(24) *Notice of assessment of civil money penalties.* The term *notice of assessment of civil money penalties* shall mean a notice of assessment of civil penalties, findings of fact and conclusions of law, and order to pay issued pursuant to sections 7(a)(1), 7(j)(15), 8(i) or 18(j) of the Act (12 U.S.C. 1817(a)(1), 1817(j)(15), 1818(i), or 1828(j)), section 106(b) of the Bank Holding Company Act (12 U.S.C. 1972), section 910(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), or any other provision of law providing for the assessment of civil money penalties by the FDIC.

(25) *Amended order to pay.* The term *amended order to pay* shall mean an

order to forfeit and pay civil money penalties, the amount of which has been changed from that assessed in the original notice of assessment of civil money penalties.

(26) *Book capital.* The term *book capital* shall mean total equity capital which is comprised of perpetual preferred stock, common stock, surplus, undivided profits and capital reserves, as those items are defined in the instructions of the Federal Financial Institutions Examination Council (FFIEC) for the preparation of Consolidated Reports of Condition and Income for insured banks.

(27) *Tier 1 capital.* The term *Tier 1 capital* shall have the same meaning as provided in § 325.2(m) of this chapter (12 CFR 325.2(m)).

(28) *Total assets.* The term *total assets* shall have the same meaning as provided in § 325.2(n) of this chapter (12 CFR 325.2(n)).

(29) *Adjusted Part 325 total assets.* The term *adjusted Part 325 total assets* shall mean adjusted 12 CFR part 325 total assets as calculated and reflected in the FDIC's Reports of Examination.

(30) *Protest.* The term *protest* shall include any comment from the public which raises a negative issue relative to the Community Reinvestment Act (12 U.S.C. 2901 *et seq.*), whether or not it is labeled a protest and whether or not a hearing is requested; however, the term *protest* shall not include any such comment which the appropriate regional manager determines to be frivolous, or to have been filed for competitive reasons by a financial institution, or to have been filed primarily as a means of delaying action on the application, or any comment which raises negative Community Reinvestment Act issues between the commenter and the applicant that have been resolved.

(31) *Standard conditions.* The term *standard conditions* refers to conditions that any delegate may include as a matter of routine in an order approving an application, whether or not the applicant has agreed to their inclusion. The following conditions, or variations thereof, are standard conditions:

(i) That the applicant has obtained all necessary and final approvals from the appropriate state authority or other applicable authority;

(ii) That if the transaction does not take effect within a specified time limit, or unless, in the meantime, a request for an extension of time has been approved, the consent granted shall expire at the end of the said time period;

(iii) That until the conditional commitment of the FDIC becomes effective, the FDIC retains the right to alter, suspend or withdraw its commitment should any interim development be deemed to warrant such action; and

(iv) In the case of a merger transaction (as defined in §303.7(b)(1)), including a phantom merger or reorganization, that the proposed transaction not be consummated before the thirtieth calendar day after the date of the order approving the merger.

(c) *Authority delegated to regional manager.* For purposes of this part, and where confirmed in writing, any authority delegated to the regional manager may also be exercised by his or her principal assistant.

(d) *Construction.* Any singular term includes the plural, and the plural includes the singular, if such use would be appropriate. Any use of the masculine, feminine, or neuter gender shall encompass all three, if such use would be appropriate.

[59 FR 52660, Oct. 19, 1994, as amended at 60 FR 31384, June 15, 1995; 62 FR 16664, Apr. 8, 1997]

§ 303.1 Application by nonmember bank, state savings association, and Federal savings association for deposit insurance.

Application for deposit insurance by an existing or proposed nonmember bank,¹ state savings association or Federal savings association should be filed with the appropriate regional director. The relevant application forms and instructions may be obtained from the appropriate FDIC regional office.

[54 FR 53556, Dec. 29, 1989]

§ 303.2 Applications by insured state nonmember bank to establish a branch, move its main office or relocate a branch.

(a) Application by an insured state nonmember bank (except a District bank) to establish and operate a new

branch², to move its main office, or relocate a branch should be filed with the appropriate regional director. For purposes of this requirement, a branch relocation is a move within the same immediate neighborhood that does not substantially affect the nature of the business of the branch or the customers of the branch. Under this paragraph, situations where an insured state nonmember bank closes a branch in one location and opens a branch in another location outside the immediate neighborhood of the closed branch are considered the establishment of a new branch and the closing of an existing branch. Applications filed under this paragraph shall indicate whether they are to establish and operate a new branch, move a main office, or relocate a branch office. The application shall be mailed or delivered to the regional director on the date on which the notice required in §303.6(f)(1) is published or not more than 30 days subsequent to the first required publication of notice. The application shall be in letter form and shall contain the following information:

(1) The exact location of the proposed site, including street address (unless one has not been assigned to the location);

(2) Details concerning any involvement in the proposal by an insider (a director, an officer, or a shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) of the bank, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(3) The impact of the proposal on the human environment, specifically, information on compliance with local zoning laws and regulations and the effect on traffic patterns;

(4) A statement as to whether or not the site is included in or is eligible for inclusion in the National Register of Historic Places, including evidence

¹ A nonmember bank is a bank which is not a member of the Federal Reserve System.

² The term branch includes any domestic branch or foreign branch as those terms are defined in section 3(o) of the Act, as amended (12 U.S.C. 1813(o)).

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that clearance has been obtained from the State Historic Preservation Officer;

(5) Comments on any changes in services to be offered, the community to be served, or any other effect the proposal may have on the applicant's compliance with the Community Reinvestment Act; and

(6) The name and address of and the date of publication in the newspaper in which notice required by § 303.6(f)(1) is published.

In cases in which additional information is necessary for evaluation of the application, the applicant may be required to furnish specific information on an individual basis. Procedures regarding applications to establish or acquire a branch pursuant to section 38 of the Act, 12 U.S.C. 1831o, are set forth at § 303.5(e) of this part.

(b) The appropriate regional director may delay processing, including extending the comment period, for good cause.

(c) *Special procedures for remote service facilities.* (1) For purposes of this section, *establishing* means owning or leasing a remote service facility either individually or jointly.

(2) An insured state nonmember bank or an insured state-licensed branch of a foreign bank whose most recent Community Reinvestment Act rating is Satisfactory or better and who desires to establish and operate or relocate a remote service facility (RSF) shall file a letter with the appropriate regional director. The letter shall contain the exact location of the proposed or relocated RSF, including street address (unless one has not been assigned to the location), and either a representation that the site of the proposed or relocated RSF is not included in or eligible for inclusion in the National Register of Historic Places or written verification that in the opinion of the appropriate state historic preservation officer the establishment or relocation of the RSF will have no adverse effect on a historic site. Unless the institution is notified otherwise by the FDIC within seven days of receipt of the letter, the institution may establish and operate or relocate the RSF. In the event that the institution cannot represent in good faith that the site of the proposed or relocated RSF is not in-

cluded in or eligible for inclusion in the National Register of Historic Places or evidence that written verification has been obtained from the appropriate state historic preservation officer, the institution shall proceed pursuant to paragraph (c)(3) of this section.

(3) An insured state nonmember bank or an insured state-licensed branch of a foreign bank whose most recent Community Reinvestment Act rating is not Satisfactory or better and who desires to establish and operate or relocate an RSF shall file the letter described in paragraph (c)(2) of this section and comply with the notice provisions of § 303.6(f). Unless the institution is notified otherwise by the FDIC within 15 days after completion of processing of the letter, the institution may establish and operate or relocate the RSF; provided however, that in the event that a protest is filed with the FDIC or other objection is taken prior to completion of processing the letter, the institution shall not establish and operate or relocate the RSF until the FDIC provides written notice of its approval. [54 FR 53556, Dec. 29, 1989, as amended at 58 FR 8216, Feb. 12, 1993; 59 FR 4250, Jan. 31, 1994; 59 FR 43282, Aug. 23, 1994]

§ 303.3 Application for conversion, merger, consolidation, assumption and sale of asset transactions.

(a) *Merger, consolidation, asset acquisition or assumption transaction between insured depository institutions.* Application by an insured depository institution for the consent of the Corporation to merge or consolidate with, acquire the assets of, or assume the liability to pay any deposits made in, another insured depository institution—when the resulting or assuming depository institution is to be an insured state nonmember bank (except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision), together with copies of all agreements or proposed agreements relating thereto, including the charter or articles of incorporation of the resulting or assuming depository institution, should be filed with the appropriate regional director. Procedures regarding applications to acquire an interest in

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any company or insured depository institution pursuant to section 38 of the Act, 12 U.S.C. 1831o, are set forth at § 303.5(e) of this part.

(b) *Merger of Insured depository institution with noninsured bank or institution.* Application by an insured depository institution for the consent of the Corporation to merge or consolidate with a noninsured bank or institution, or to convert into a noninsured institution, or to assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution, or to transfer assets to any noninsured bank or institution in consideration of the assumption of liability for any portion of the deposits made in such insured depository institution, together with copies of all agreements or proposed agreements relating thereto, should be filed with the appropriate regional director.

(c) *Conversion with diminution of capital or surplus.* Application for the consent of the Corporation to convert into an insured state nonmember bank (except a District bank), when the conversion will result in the converted bank's having less capital stock or surplus than the converted bank at the time of the shareholders' meeting approving such conversion, together with copies of the charter and/or articles of association of the converted bank, should be filed with the appropriate regional director.

(d) *Applications for approval of transactions under section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)).* Application by an insured state nonmember bank for consent of the Corporation to enter into a transaction under section 5(d)(3) of the Federal Deposit Insurance Act shall be made by submitting a letter accompanying the merger application certifying:

(1) That the application for approval is for a transaction under section 5(d)(3), and

(2) That the transaction will not result in the transfer of any insured depository institution's Federal deposit insurance from one federal deposit insurance fund to the other federal deposit insurance fund.

(e) The appropriate application forms and instructions, as well as instruc-

tions concerning notice to depositors, may be obtained upon request from the office of said regional director.

[54 FR 53556, Dec. 29, 1989, as amended at 57 FR 5815, Feb. 18, 1992; 58 FR 8216, Feb. 12, 1993]

§ 303.4 Change in bank control.

(a) *Acquisition of control.*³ Under the Change in Bank Control Act of 1978, acquisitions by a person⁴ or persons acting in concert with the power to vote 25 percent or more of a class of voting securities of an insured depository institution, unless exempted, require prior notice to the Corporation. In addition, a purchase, assignment, transfer, pledge, or other disposition of voting stock through which any person will acquire ownership, control, or the power to vote ten percent or more of a class of voting securities of an insured depository institution will be presumed to be an acquisition by such person of the power to direct that institution's management or policies if:

(1) The institution has issued any class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1944 (15 U.S.C. 781); or

(2) Immediately after the transaction, no other person will own a greater proportion of that class of voting securities.

Other transactions resulting in a person's control of less than 25 percent of a class of voting shares of an insured depository institution would not result in control for purposes of the Act. An acquiring person may request an opportunity to contest any presumption established by this paragraph (a) of this section with respect to a proposed transaction. The Corporation will afford the person an opportunity to

³Control is defined in section 7(j)(8)(B) of the Act as "the power, directly or indirectly, to direct the management or policies of an insured bank or to vote over 25 percent or more of any class of voting securities of an insured bank." 12 U.S.C. 1817(j)(8)(B).

⁴Person is defined in section 7(j)(8)(A) of the Act as "an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein." 12 U.S.C. 1817(j)(8)(A).

present views in writing, or, where appropriate, orally before its designated representatives either at informal conference discussions or at informal presentations of evidence.

(b) *Notices.* (1) Notice of a proposed acquisition of control should be filed with the regional director of the FDIC region in which the depository institution in which stock is being acquired is located. The FDIC will not accept a notice unless the information provided is responsive to every item specified in paragraph 6 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(6)) and every item prescribed in the appropriate FDIC forms. With respect to personal financial statements required by paragraph 6(b) of the Change in Bank Control Act of 1978, an acquiring person may include a current statement of assets and liabilities, as of a date not more than ninety days prior to the date the notice is filed, a brief income summary, and a statement of material changes since the date of the statement. The appropriate regional director, the Director (DOS), or the Board of Directors may require additional information with respect to personal financial statements.

(2)(i) Except as otherwise provided in paragraph (b)(2)(ii) or (b)(2)(iii) of this section, within ten days after receiving confirmation that the appropriate FDIC regional office has accepted the notice, the acquiring person(s) shall publish an announcement of such acceptance in the business section of a newspaper having general circulation in the community in which the home office of the depository institution whose stock is sought to be acquired is located. Promptly thereafter, the acquiring person(s) shall send a copy of the newspaper announcement and the publisher's affidavit of publication to the regional director of the FDIC region in which the subject depository institution is located. The newspaper announcement shall contain the name(s) of the proposed acquirer(s), the name of the depository institution whose stock is sought to be acquired, and the date of acceptance by the FDIC of the notice of acquisition of control. The announcement shall also state that any person wishing to comment on the proposed change in control may

do so by submitting written comments to the regional director of the FDIC at (give address of the regional office) within twenty days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (b)(3) of this section, within such shorter period.

(ii) In a community in which there is no daily or weekly community newspaper, the acquiring person(s) may satisfy the publication requirement contained in paragraph (b)(2)(i) of this section by publishing the required newspaper announcement in either a county-wide newspaper (in the county in which the bank's home office is located) or, if there is no county-wide newspaper, in a state-wide newspaper.

(iii) In the case of a notice filed in contemplation of a public tender offer subject to the requirements of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78n) and the FDIC's regulations governing tender offers (12 CFR 335.501 through 335.530), the acquiring person(s) shall publish the required newspaper announcement not later than the earliest of:

(A) The commencement of the tender offer under § 335.502 of the FDIC's regulations (12 CFR 335.502);

(B) Other public announcement of the tender offer; or

(C) Thirty-four days after the FDIC's acceptance of the notice of acquisition of control.

(3)(i) In acting upon a proposed change in control, the FDIC shall consider all public comments received within twenty days following the required newspaper publication. At the FDIC's option, comments received after this twenty-day period may be, but need not be, considered.

(ii) If the FDIC determines in writing that the newspaper publication or comment solicitation requirements of this paragraph would seriously threaten the safety or soundness of the depository institution to be acquired, including situations where the FDIC must act immediately in order to prevent the probable failure of the bank to be acquired, then the FDIC may:

(A) Waive the publication requirement;

(B) Waive the public comment solicitation requirement; or

(C) Act on the proposed change in control prior to the expiration of the public comment period.

(iii) In other circumstances, for good cause, the FDIC may shorten the public comment period to a period of not less than ten days. Such good cause will exist only if the FDIC determines that circumstances beyond the control of the acquiring person or persons warrant a shorter period.

(4) A notice of acquisition of control that is filed in contemplation of a public tender offer subject to sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78n) and the FDIC's regulations governing tender offers (12 CFR 335.501 through 335.530) may be given confidential treatment for up to thirty-four days after the notice is accepted if:

(i) The filing party requests confidential treatment under this rule and represents that a public announcement of the tender offer and the filing of appropriate forms with the FDIC will occur within thirty-four days from the acceptance of the notice; and

(ii) The FDIC determines, in its discretion, that it is in the public interest to grant confidential treatment. In its discretion, the FDIC may grant confidential treatment under other circumstances when consistent with the purposes of the Change in Bank Control Act of 1978.

(5) Nothing in this regulation shall affect any obligation which the acquiring person(s) may have to comply with the Federal securities laws or any other laws.

(6)(i) Whenever a notice of a proposed acquisition of control is not filed in accordance with the Change in Bank Control Act of 1978 and these regulations, the acquiring person(s) shall, within ten days of being so directed by the FDIC, publish an announcement of the acquisition of control in the business section of a newspaper having general circulation in the community in which the home office of the depository institution involved is located. In a community in which there is no daily or weekly community newspaper, the required newspaper announcement may be published in a county-wide newspaper (in

the county in which the depository institution's home office is located) or, if there is no county-wide newspaper, in a statewide newspaper.

(ii) The newspaper announcement shall contain the name(s) of the acquire(s), the name of the depository institution involved, and the date of the acquisition of the stock. The announcement shall also contain a statement indicating that the FDIC is currently reviewing the acquisition of control. The announcement shall also state that any person wishing to comment on the change in control may do so by submitting written comments to the regional director of the FDIC at (give address of the regional office) within twenty days following the required newspaper publication.

(c) *Exempt transactions.* The following transactions are not subject to the prior notice requirements of the Change in Bank Control Act of 1978:

(1) The acquisition of additional shares of an insured depository institution by a person who continuously since March 9, 1979, held power to vote 25 percent or more of the voting shares of that institution, or by a person who has acquired and maintained control of that institution after complying with the procedures of the Change in Bank Control Act;

(2) The acquisition of additional shares of an insured depository institution by a person who under paragraph (a) of this section would be presumed to have controlled that institution continuously since March 9, 1979, if:

(i) The transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the institution; or

(ii) In other cases, the Corporation determines that the person has controlled the institution since March 9, 1979;

(3) The acquisition of shares in satisfaction of a debt previously contracted in good faith or through testate or intestate succession or bona fide gift; *Provided*, The acquirer advises the appropriate regional director within thirty days after the acquisition and provides such of the information specified in paragraph 6 of the Change in Bank

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Control Act as the regional director requests;

(4) A transaction subject to approval under section 3 of the Bank Holding Company Act, section 18 of the Act or section 10 of the Home Owners' Loan Act;

(5) A transaction described in sections 2(a)(5) or (3)(a)(5)(A) or (B) of the Bank Holding Company Act, (12 U.S.C. 1841(a)(5) or 1842 (a)(5)) by a person there described;

(6) A customary one-time proxy solicitation and receipt of pro-rata stock dividends; and

(7) The acquisition of shares in foreign banks which have an insured branch or branches in the United States; *Provided, however*, That this exemption does not extend to the reports and information required under sections 7(j)(9), (10), and (12) of the Act.

[54 FR 53557, Dec. 29, 1989, as amended at 59 FR 52662, Oct. 19, 1994]

§ 303.5 Applications concerning insurance fund conversions, prompt corrective action, and other applications.

(a) *Conversion involving transfer of deposits between the Savings Association Insurance Fund (SAIF) and the Bank Insurance Fund (BIF).* Application by any depository institutions to participate in a conversion transaction involving the transfer of deposits from the SAIF Fund to the BIF Fund or *vice versa* should be filed with the appropriate regional director. The application shall be in letter form, signed by representatives of each institution participating in the transaction, and shall contain the following information:

(1) A description of the transaction;

(2) A statement of condition of each institution as of the date of application;

(3) A statement of condition of each institution as of May 1, 1989, with a notation as to the amount of net interest credited to total deposits during the period beginning May 1, 1989, and ending on the expected date of transfer;

(4) The amount of deposits involved in the conversion transaction;

(5) A pro forma balance sheet and income statement for each institution upon consummation of the transaction;

(6) A listing of any other conversion in which either institution has partici-

pated since August 9, 1989, or any other conversion transaction in process at the time of filing; and

(7) Any other information that the regional director may from time to time require.

(b) Except as otherwise provided by rule or regulation, all applications, requests, and submittals for which no form of application has been prescribed by the Corporation should:

(1) Be in writing;

(2) (i) Be signed by the president, cashier, or managing officer of the depository institution in the case of:

(A) An application by a depository institution whose insured status has been terminated under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) for permission to continue or resume its status as an insured depository institution; or

(B) An application made by an insured depository institution under part 328 of this title; or

(ii) Be signed by the applicant or a duly authorized agent in all other cases;

(3) Contain a statement of the applicant's interest therein, a complete and concise statement of the action requested, and the reasons and facts relied upon as the basis for such requested action; and

(4) (i) Be addressed to the appropriate regional director in the case of an application, request, or notice of acquisition of control from or relating to a particular bank or institution; or

(ii) The Executive Secretary of the Corporation at the Corporation's Washington, DC headquarters in all other cases.

The applicant shall furnish such other pertinent information as may be required by the Corporation. Forms to be executed in conjunction with an application for consent to exercise trust powers may be obtained from the appropriate FDIC regional office.

(c) In addition to the foregoing, an application by a depository institution whose insured status has been terminated under section 8 of the Act for permission to continue or resume its status as an insured depository institution should:

(1) Be accompanied by a certified copy of the resolution of its board of directors; and

(2) Contain a statement that the depository institution's insured status has been terminated (including the date thereof and the basis therefor) and that the insurance of its deposits has not ceased.

(d) Applications under § 347.4 of this chapter to acquire or hold stock or other evidence of ownership in a foreign bank or other financial entity shall be submitted to the appropriate regional director in letter form and, unless otherwise directed by the Corporation, shall contain full information concerning the foreign bank or other financial entity including (unless previously furnished):

(1) The cost, number, class of shares to be acquired, and the proposed carrying value of such shares on the books of the insured state nonmember bank;

(2) A recent balance sheet and income statement of the foreign bank or other financial entity;

(3) A brief description of the foreign bank's or other financial entity's business (including full information concerning any direct or indirect business transacted in the United States);

(4) Lists of directors and principal officers (with address and principal business affiliation of each) and of all shareholders known to the issuing bank holding 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each; and

(5) Information concerning the rights and privileges of the various classes of shares outstanding.

(e) *Applications pursuant to section 38 of the Act and subpart B of part 325 of the FDIC's regulations (prompt corrective action).* An application by any insured depository institution pursuant to section 38 of the Act, 12 U.S.C. 1831o, and subpart B of part 325 of the FDIC's regulations, 12 CFR part 325, should be filed with the DOS regional director of the FDIC region in which the insured depository institution is located. The application shall be in letter form, except as otherwise provided in paragraphs (e)(1) through (5) of this section. Such letter shall be signed by the

president, senior officer or a duly authorized agent of the insured depository institution and be accompanied by a certified copy of a resolution adopted by the institution's board of directors or trustees authorizing the application. Each application shall contain the information specified in paragraphs (e)(1) through (5) of this section and any other information requested by the Corporation.

(1) *Capital distributions.* An application to repurchase, redeem, retire or otherwise acquire shares or ownership interests of the insured depository institution shall describe the proposal, the shares or obligations which are the subject thereof, and the additional shares or obligations of the institution which will be issued in at least an amount equivalent to the distribution. The application shall also explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. Where the proposed action also requires an application pursuant to section 18(i) of the Act (12 U.S.C. 1828 (i)), such application should be filed concurrently with or made a part of the application pursuant to section 38 of the Act.

(2) *Acquisitions, branching, and new lines of business.* Applications shall describe the proposal, state the date institution's capital restoration plan was accepted by its primary Federal regulator, describe the institution's status toward implementing the plan, and explain how the proposed action is consistent with and will further the achievement of the plan or otherwise further the purposes of section 38 of the FDI Act. Where the FDIC is not the applicant's primary Federal regulator, the application should also state whether approval has been requested from the applicant's primary Federal regulator, the date of such request and the disposition of the request, if any. Where the proposed action also requires applications pursuant to section 18 (c) or (d) of the FDI Act (12 U.S.C. 1828 (c) or (d) of the FDI Act (12 U.S.C. 1828 (c) or (d))), such applications should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the Act.

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(3) *Bonuses and increased compensation for senior executive officers.* Applications shall list each proposed bonus or increase in compensation, and for the latter shall identify compensation for each of the twelve calendar months preceding the calendar month in which the institution became undercapitalized. Applications shall also state the date the institution's capital restoration plan was accepted by the FDIC, and describe any progress made in implementing the plan.

(4) *Payment of principal or interest on subordinated debt.* Applications shall describe the proposed payment and provide an explanation of action taken under section 38(h)(3)(A)(ii) of the Act. The application shall also explain how such payments would further the purposes of section 38 of the Act. Existing approvals pursuant to requests filed under 18(i)(1) shall not be deemed to be the permission needed pursuant to section 38.

(5) *Restricted activities of Critically Undercapitalized Institutions.* Applications to engage in any of the following activities shall describe the proposed activity and explain how the activity would further the purposes of section 38 of the Act:

(i) Enter into any material transaction other than in the usual course of business including any action with respect to which the institution is required to provide notice to the appropriate Federal banking agency;

(ii) Extend credit for any highly leverage transaction;

(iii) Amend the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(iv) Make any material change in accounting methods;

(v) Engage in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act (12 U.S.C. 371A(b))); or

(vi) Pay excessive compensation of bonuses.

[54 FR 53558, Dec. 29, 1989, as amended at 58 FR 8217, Feb. 12, 1993; 59 FR 52662, Oct. 19, 1994]

§ 303.6 Application procedures.

(a) *Scope of section.* Paragraphs (f) through (n) of this section apply to:

(1) Applications for deposit insurance by proposed new depository institutions or operating non-insured institutions;

(2) Applications by insured state non-member banks to establish branches, including applications to establish remote service facilities by banks whose most recent Community Reinvestment Act rating is not Satisfactory or better or who cannot represent compliance with the National Historic Preservation Act;

(3) Applications by insured state non-member banks to move their main office or relocate their branch offices, including applications to relocate remote service facilities by banks whose most recent Community Reinvestment Act rating is not Satisfactory or better or who cannot represent compliance with the National Historic Preservation Act;

(4) Applications to merge or to consolidate with, acquire the assets of, or assume the liability to pay any deposits made in, a bank or institution, when the resulting or assuming depository institution is to be an insured state nonmember bank, and all other applications to merge or to consolidate with, or to assume liabilities, which require the Corporation's prior approval under the Bank Merger Act (12 U.S.C. 1828(c));⁵ and

(5) Any other applications, requests or submittals which the Board of Directors of the FDIC in its sole discretion deems appropriate.

In the case of applications, requests, or submittals which come within § 303.6(a)(5), the applicant will be notified at the time its application is accepted for filing that the procedures set forth in this section shall be followed in connection therewith.

⁵[Reserved]

⁶Except as otherwise provided in paragraph (f)(1) of this section, the provisions of this § 303.6 shall not be applicable to any proposed merger or assumption transaction which the Board of Directors of the Corporation determines must be acted upon immediately to prevent the probable default of one of the institutions involved or must be handled with expeditious action due to an existing emergency condition, as permitted by the Bank Merger Act (12 U.S.C. 1828(C)(6)).

(b) *Investigations and examinations.* With respect to all applications, requests, or submittals, the Board of Directors, or the Director (DOS) or the Director (DCA), or their associate directors, or the appropriate regional director, or the appropriate deputy regional director, or the appropriate regional manager acting under delegated authority may require any investigation or examination, or both, to be performed as deemed appropriate. Upon receipt of the report of any investigation or examination and any recommendations based on the report, the Board of Directors, or either director, or their associate directors, or the regional director, or the deputy regional director, or the regional manager acting within the scope of delegated authority will take any action determined necessary or appropriate under the circumstances.

(c) *Opportunity to present views.* With respect to any application, the Corporation may afford the applicant or other properly interested persons, including government agencies, an opportunity to present views orally or in writing before or to its designated representative or representatives, either at informal conference discussions or at informal presentations of evidence.

(d) *Notice of disposition of applications.* Prompt notice will be given of the grant or denial, in whole or in part, of any written application, petition, or other request of any interested person made in connection with any agency proceeding. In the case of a denial of an application by a federal savings association for deposit insurance, such notice will be sent to the Director of the Office of Thrift Supervision, and will be accompanied by a written statement giving specific reasons for the Corporation's determination with reference to the factors described in paragraphs (1), (2), (3), (4) and (5) of section 6 of the Act (12 U.S.C. 1816). In the case of any other denial, except in affirming a prior denial, or where the same is self-explanatory, such notice will be accompanied by a simple statement of the reasons therefor.

(e) *Opportunity to petition for reconsideration of a denied application, petition, or other request.* (1) Within 15 days of its receipt of notice that its application,

petition, or request has been denied, any applicant may petition the FDIC for reconsideration of such application, petition, or request (except an application, petition or request already previously denied upon reconsideration). The petition must be in writing and should:

(i) Specify reasons why the FDIC should reconsider its action

(ii) Set forth relevant, substantive information that for good cause was not previously set forth in the application, petition, or request to be reconsidered; and

(iii) A petition or request relating to a safety and soundness matter should be filed with the appropriate regional director. A petition or request relating to compliance with consumer protection, fair lending, community reinvestment or civil rights laws should be filed with the appropriate regional manager. If a particular insured depository institution or insured branch of a foreign bank was not the subject of the application, petition, or request on which reconsideration is sought, the petition should be filed with the Executive Secretary of the FDIC at the FDIC's Washington, DC office.

(2) (i) The Director (DOS) or the Director (DCA) or, where confirmed in writing by the appropriate Director, an associate director, or the appropriate regional director or deputy regional director, or the appropriate regional manager, or, in the case of a petition for reconsideration filed with the Executive Secretary, the General Counsel or his or her designee, shall determine whether the petition for reconsideration satisfies paragraphs (e)(1)(i) and (ii) of this section and shall promptly notify the petitioner of such determination.

(ii) If, pursuant to paragraph (e)(2)(i) of this section, a petition for reconsideration is determined not to satisfy paragraphs (e)(1)(i) and (ii) of this section, an applicant may appeal such decision to the appropriate Director, and where confirmed in writing by that Director, to an associate director, or, in the case of a petition for reconsideration filed with the Executive Secretary, to the Chairperson of the FDIC or his or her designee. An applicant may not submit additional information

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or evidence with the appeal and the determination by the appropriate Director or associate director, or the Chairperson of the FDIC or his or her designee whether the petition satisfies paragraphs (e)(1)(i) and (ii) of this section is final, and not appealable to the Board of Directors.

(iii) If a petition for reconsideration is determined to satisfy paragraphs (e)(1)(i) and (ii) of this section, then the previously denied application, petition, or request will be reconsidered:

(A) By the Board of Directors if originally denied by the Board of Directors; or

(B) By the appropriate director, or where confirmed in writing by the director, by an associate director, if originally denied by the director, associate director, regional director, deputy regional director, or regional manager.

(iv) Decisions by either director or their associate directors on petitions for reconsideration are final and not appealable to the Board of Directors.

(f) *Notice of filing of application*—(1) *Notice by publication.* (i) In the case of applications in connection with a *merger transaction* (as defined by the Bank Merger Act, 12 U.S.C. 1828(c)(3)), unless the Corporation determines it must act immediately in order to prevent the probable failure of one of the depository institutions involved, the applicant must publish notice of the proposed transaction on at least three occasions at approximately two week intervals in a newspaper of general circulation in the community or communities where the main offices of the banks or institutions involved are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. The last publication of the notice shall appear on the 30th day or the newspaper's publication date closest to 30 days after the first publication. The public shall have a minimum of 30 days from the date of first publication to comment on the application. Where the Corporation determines that an emergency exists which requires expeditious action, then notice shall be published twice during a 10 day period, first, as soon as possible after the Corporation notifies the ap-

plicant that the merger will be processed as an emergency requiring expeditious action and, second, on the 10th day or the newspaper's publication date closest to 10 days after the date of first publication. The public shall have a minimum of 10 days from the date of first publication to comment on the application. The published notice shall include the name and main office location of all banks or institutions involved in the transactions and the subject matter of the application. If it is contemplated that the continuing bank will operate the offices of the other depository institution(s) as branches, the following statement shall be added to the notice:

It is contemplated that all of the offices of the above named institutions will continue to be operated (with the exception of [identity and location of each office which will not be operated]).

(ii) In the case of all other applications described in paragraph (a) of this section, on the date the deposit insurance application form or the letter application required in §303.2 is mailed or delivered to the regional director or not more than 30 days prior to that date, the applicant shall publish notice or begin publication of notice if more than one notice is required, of the proposed transaction. *Provided however,* That no publication shall be required in connection with the granting of insurance to a new depository institution established pursuant to the resolution of a failed institution situation. Publication of notice shall be made at least once each week on the same day for two consecutive weeks for applications to move a main office or relocate a remote service facility and once for other applications described in paragraph (a) of this section and shall be in a newspaper of general circulation in the communities referred to below:

(A) *Applications to establish a branch, including a remote service facility.* In the communities in which the home office and the domestic branch to be established are located; *Foreign Branch:* In the community in which the home office is located.

(B) *Applications to move a main office and relocate a branch (including a remote service facility).* In the communities in which the home office, office to be

closed, and office to be opened are located, provided that a foreign bank having an insured branch need only publish such notice in the communities in which the insured branch is located and is to be relocated.

(C) *Applications for deposit insurance.* In the community in which the home bank office is or will be located, provided that a foreign bank making application for an insured branch need only publish such notice in the community in which the insured branch is to be located.

The published notice required by (f)(1) of this section shall include the name of the applicant, the subject matter of the application, and the location or locations at which the applicant proposes to engage in business.

(iii) In all instances, immediately after final publication, the applicant shall advise the appropriate regional director that the publication requirements have been met.

(2) *Notice by posting.* In the case of applications to move a main office or relocate a branch, in addition to the notice by publication described in paragraph (f)(1) of this section, notice of the publication shall be posted in the public lobby of the office(s) to be moved or relocated, if such public lobby exists, for at least 21 days beginning with the date of the last published notice required by paragraph (f)(1) of this section for applications to move a main office; and for at least 15 days beginning with the date of the publication notice required by paragraph (f)(1) of this section for applications to relocate a branch.

(3) *Comments.* Anyone who wishes to comment on an application may do so by filing comments in writing with the appropriate regional director at any time before the Corporation has completed processing the application. Processing will be completed, for applications other than applications to move a main office, to relocate a remote service facility and to merge, not less than 15 days after the publication of the notice required by paragraph (f)(1) of this section or 15 days after the Corporation's receipt of the application, whichever is later; for applications to move a main office or relocate a remote service facility, not less than

21 days after the last publication or 21 days after the Corporation's receipt of the application, whichever is later; for merger applications for which the Corporation has not determined it must act immediately in order to prevent the probable failure of one of the depository institutions involved, not less than 30 days after the first publication or, if the Corporation has determined that an emergency exists which requires expeditious action, not less than 10 days after the first publication. This time period may be extended by the appropriate regional director for good cause. Such regional director shall report the reasons for such action to the Board of Directors.

(4) *Notice of right to comment.* In order to fully apprise the public of its rights under paragraph (f)(3) of this section, the notice described in paragraph (f)(1) of this section shall include a statement describing the right to comment upon, or protest the granting of, the application. This notice shall consist of the following statement:

Any person wishing to comment on this application may file his or her comments in writing with the regional director of the Federal Deposit Insurance Corporation at its regional office (address of the regional office) before processing of the application has been completed. Processing will be completed no earlier than the (main office moves and remote service facility relocations—21st; non-emergency mergers—30th; emergency mergers—10th; other applications described in paragraph (a) of this section—15th) day following (mergers—the first required publication; all other applications described in paragraph (a) of this section—either the date of the last required publication or the date of receipt of the application by the FDIC, whichever is later). The period may be extended by the regional director for good cause. The nonconfidential portion of the application file is available for inspection within one day following the request for such file. It may be inspected in the Corporation's regional office during regular business hours. Photocopies of information in the nonconfidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the regional office.

(5) *Solicitation of comments by regional director.* Whenever he deems it appropriate, the regional director may solicit comments from any person or institution which, in his opinion, might

have an interest in or be affected by the pending application.

(g) *Public access to application file*—(1) *Inspection of application file.* Any person may inspect the nonconfidential portions of an application file. For a period extending until 180 days after final disposition of an application, the nonconfidential portions of the file will be available for inspection in the regional office of the FDIC in which an application has been filed. During this period, the nonconfidential portion of the file will be produced for review not more than one working day after receipt by the regional office of the request (either written or oral) to see the file. Photocopies of the nonconfidential portions of the file will be available, upon request, to any person. A charge for making copies will be made in accordance with the fee schedule contained in § 309.5(b) of this chapter. No charge will be imposed for the search for, and review of, the application file. One hundred and eighty (180) days after the final disposition of an application, the nonconfidential portions of an application file will be made available in accordance with the provisions of § 309.5 of this chapter.

(2) *Nonconfidential portions of application file.* Subject to the provisions of paragraph (g)(3) of this section, the following information in an application file will be available for public inspection:

(i) The application with supporting data and supplementary information.

(ii) Data, comments, and other information submitted by interested persons in favor of, or in opposition to, such application.

(iii) Those portions of the investigation report prepared by the Corporation's field examiner in connection with the application which cover the convenience and needs of the community to be served by the applicant or applicants and either the future earnings prospects or the future prospects of the applicant or applicants.

(iv) A summary assessment of the applicant or applicants, based on their Community Reinvestment Act examination.

(v) Where a hearing has been held pursuant to paragraph (i) of this section, any evidence submitted pursuant

to paragraph (j)(3) of this section and the hearing transcript described in paragraph (j)(5) of this section.

(3) *Withholding of confidential information.* No material described in paragraph (g)(2) of this section shall be available if it is determined to be confidential under the provisions of 5 U.S.C. 552. The following information generally is considered confidential:

(i) Personal information, the release of which would constitute a clearly unwarranted invasion of privacy.

(ii) Commercial or financial information, the disclosure of which would result in substantial competitive harm to the submitter.

(iii) Information the disclosure of which could seriously affect the financial condition of any financial institution.

(h) *Proceedings*—(1) *Requests for hearing or other proceeding.* Anyone who has made a formal comment within the period specified in paragraph (f)(3) of this section may request a hearing or an oral presentation at the time of making the formal comment. If a hearing or an oral presentation is requested, the request must be accompanied by a brief statement by the person requesting the hearing or presentation of his or her interest in the application and of the matters which he or she wishes to discuss. If the Corporation determines that a hearing or other form of oral presentation should be allowed, the person making the request will be advised of the date, time, and location of the hearing or oral presentation.

(2) *Form of proceeding.* The Corporation may, at its discretion, decide to hold a hearing on the application in accordance with paragraph (i) of this section; it may decide to hold an informal proceeding in accordance with paragraph (h)(3) of this section; or it may decide not to hold a hearing or an informal proceeding in which case, where there has been a request for an opportunity to be heard pursuant to paragraph (h)(1) of this section, it will so advise the applicant and all persons who requested an opportunity to be heard. A decision as to the form of proceeding to be held will be made not more than 30 days after a request for a hearing or oral presentation has been

made pursuant to paragraph (h)(1) of this section.

(3) *Informal proceedings.* If the Corporation decides to hold an informal proceeding, the regional director shall, not less than 10 days prior thereto, notify the applicant and each person who requested a hearing, or oral presentation in accordance with paragraph (h)(1) of this section, of the date, time, and place of the proceeding. The regional director may, if he deems it advisable, notify other persons who have expressed an interest in the application and invite them to attend. The proceeding may assume any form, including a meeting with Corporation representatives, at which the participants will be asked to present their views orally. The regional director shall also have the discretion to hold separate meetings with each of the participants where he deems it desirable.

(i) *Hearings.* Hearings of the kind provided for in this paragraph will not generally be afforded the participants if they have had the opportunity to participate in prior hearings before the appropriate State authority which covered essentially the same issues or if the regional director determines that less formal proceedings would be adequate.

(1) *Notice of hearing—(i) Contents.* If the Corporation determines that a hearing on the application is warranted, the regional director shall, not less than 10 days prior thereto, give notice of the scheduling of the hearing, and shall set forth in the notice the subject matter of the application, the significant issues to be presented, and the date, time, and place at which the hearing shall be held.

(ii) *To whom sent.* The above notice shall be sent by registered or certified mail to the applicant and to each person who requested a hearing in accordance with paragraph (h)(1) of this section. The regional director may also notify other persons who have expressed an interest in the application and invite them to participate in the hearing.

(2) *Attendance at hearing.* Each interested person who wishes to attend the hearing shall notify the regional director accordingly with 5 days after the date upon which he receives the above

notice. Unless he has already done so, he shall submit a brief written summary of the matters which he wishes to cover at the hearing, together with the number and names of witnesses he wishes to present. The applicant and other interested persons attending the hearing may be represented by counsel.

(3) *Presiding officer.* The presiding officer at the hearing shall be the regional director, his designee, or such other person as may be named by the Board of Directors or the Director (DOS). The presiding officer shall have the authority to appoint a panel to assist him.

(j) *Hearing rules—(1) Order of presentation.* The following schedule is intended to serve as a general guide to the conduct of the hearing. It is not fixed and may be varied at the discretion of the presiding officer. The presiding officer shall determine the order of opening and closing statements and presentations to be followed by all participants other than the applicant who in each instance shall have the opportunity to speak first.

(i) *Opening statements.* The applicant and each other participant may make opening statements which should concisely state what the participant intends to show.

(ii) *Applicant's presentation.* Following the opening statement(s), the applicant shall present its data and materials orally or in writing.

(iii) *Requester's presentation.* Following the applicant's presentation, each person who requested the hearing shall present his data and materials orally or in writing. Those who requested the hearing may agree, with the approval of the presiding officer, to have one of their number make their presentation.

(iv) *Other interested persons.* Following the evidence of the applicant and the requesters, the presiding officer will recognize other interested persons who may present their views with respect to the application under consideration.

(v) *Summary statement.* After all the above presentations have been concluded, the applicant and each other participant may make a short concise rebuttal.

(2) *Witnesses.* Each participant is responsible for providing his own witnesses, including the payment of all expenses associated with their appearance at the hearing. All witnesses will be present on their own volition, but any person appearing as a witness may be subject to questioning by any participant, by the presiding officer, or by any member of the panel. The refusal of a witness to answer questions may be considered by the Corporation in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

(3) *Evidence.* The presiding officer shall have the authority to exclude data or materials which he deems to be improper, irrelevant, or repetitive. Formal rules of evidence shall not be applicable to these hearings. Documentary material submitted as evidence must be of a size consistent with ease of handling, transportation, and filing. Three copies of all such documentary material shall be furnished to the regional director, and any participant who specifically requests the same shall be furnished a copy at his own expense. While large exhibits may be used during the hearing, copies of such exhibits must be provided by the person in reduced size for submission as evidence.

(4) *Procedural questions.* The presiding officer, or any designated member of the panel, shall determine all procedural questions not governed by this section. The presiding officer shall have the authority to limit the number of witnesses to be used by any person and to impose reasonable time limitations.

(5) *Transcript.* A transcript of each hearing will be arranged for by the Corporation. The person or persons who requested the hearing will be expected to pay all the expenses of such service, including the furnishing of one copy of the transcript to the regional director. *Provided, however,* That the Corporation may, for good cause, waive this requirement in individual cases. Where a hearing is held at the Corporation's initiative, the Corporation shall bear the expense of such service. Copies of the transcript will be furnished to any interested person requesting the same at that person's expense.

(6) *The hearing record—(i) Contents.* The nonconfidential portions of the application, as described in paragraph (c) of this section, shall automatically be a part of the hearing record.

(ii) *Closing the hearing record—additional statements.* Any person who participates in the hearing may request that the hearing record remain open for 10 days following receipt of the transcript by the regional director during which time the person may submit corrected copies of the transcript, or additional written statements or materials which he agreed to furnish at the hearing, to the regional director. Such person shall simultaneously mail or have delivered copies of the corrected transcript or additional statements or materials to all other persons who participated in the hearing.

(k) *Disposition and notice thereof.* (1) The final disposition of any application or other matter under this section need not be determined exclusively by, or be limited to, the information contained in the public file established by paragraph (g) of this section.

(2) The applicant, and any other person who so requests in writing, shall be notified by the Board of Directors of the final disposition of the application or other matter. The Board of Directors shall also provide a statement of the reasons for the final disposition made.⁷

(1) *Computation of time.* Section 308.22 shall govern the computation of any period of time prescribed or allowed by this section.

(m) *Retained authority.* In acting upon any particular application, the Board of Directors may by resolution adopt procedures which differ from this section when it deems it necessary and in the public interest to do so. Such resolution shall be made available for public inspection and copying in the Office

⁷Where final authority to dispose of an application or other matter has been delegated to the Director (DOS), an associate director, the regional directors and the deputy regional directors pursuant to §303.7, the delegate will provide the notice and statement described in this paragraph (k)(2).

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of the Executive Secretary of the Corporation in accordance with the requirements of 5 U.S.C. 552(a)(2).

[54 FR 53559, Dec. 29, 1989, as amended by 59 FR 4250, Jan. 31, 1994; 59 FR 43282, Aug. 23, 1994; 59 FR 52662, Oct. 19, 1994; 59 FR 66655, Dec. 28, 1994]

§ 303.7 Delegation of authority to the Director (DOS) and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.

The Board of Directors of the FDIC has delegated to officials in the Division of Supervision and other employees of the FDIC the authority on behalf of the Board of Directors to act (subject to the provisions of § 303.10 of this part) on the following applications, requests, and notices of acquisition of control.

(a) *Applications for branches (including remote service facilities, courier services, foreign branches of domestic banks), relocations, and for trust and other banking powers—*(1) *Branch and relocation applications.* (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for consent to establish branch facilities (including remote service facilities, courier services and foreign branches of domestic banks) or relocations where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those standard conditions listed in § 303.0(b)(31).

(ii) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director:

(A) To deny applications for consent to establish branch facilities (including remote service facilities, courier services and foreign branches of domestic banks) or relocations; and

(B) To approve such applications where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section but does not agree in writing to comply with any condition imposed by the delegate.

(iii) The requisites which must be satisfied before the authority delegated by paragraphs (a)(1)(i) and (ii)(B) of this section to approve applications for consent to establish branch facilities or relocations may be exercised are:

(A) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved (except that this requisite does not apply to applications to establish courier services);

(B) The applicant meets the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the consummation of the transaction which is the subject of the application, except that this requisite does not apply to applications to establish courier services, remote service facilities, and relocations of branches or main offices;

(C) Any financial arrangements which have been made in connection with the proposed branch or relocation and which involve the applicant's directors, officers, major shareholders, or their interests, are fair and reasonable in comparison to similar arrangements that could have been made with independent third parties; and

(D) The requirements of the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901 through 2905) and its applicable implementing regulation (12 CFR part 345) have been considered and favorably resolved (except that this requisite does not apply to applications to establish foreign branches): *Provided, however,* That the authority to approve an application may not be subdelegated to a regional director or deputy regional director where a protest (as that term is defined in § 303.0(b)(30)) under the Community Reinvestment Act is filed.

(2) *Applications for consent to exercise trust and other banking powers.* (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to

approve applications for the FDIC's consent to exercise trust or other banking powers where the applicant satisfies the requisites listed in paragraph (a)(2)(iii) of this section and agrees in writing to comply with any other conditions imposed by the delegate other than those standard conditions listed in § 303.0(b)(31).

(ii) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director:

(A) To deny applications for trust or other banking powers; and

(B) To approve such applications where the applicant satisfies the requisites listed in paragraph (a)(2)(iii) of this section but does not agree in writing to comply with any condition required by the delegate other than those standard conditions listed in § 303.0(b)(31).

(iii) The requisites which must be satisfied before the authority delegated by paragraphs (a)(2)(i) and (ii)(B) of this section to approve applications for trust or other banking powers may be exercised are:

(A) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(B) The proposed management of the trust or other banking business is determined capable of satisfactorily handling the anticipated business; and

(C) In regards to trust applications only, the applicant's board of directors has formally adopted Form 114—

Statement of Principles of Trust Department Management.

(b) *Merger transactions.* (1) Except as provided in paragraphs (b)(4) and (5) of this section and in § 303.10(b) of this part, authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or the appropriate regional director or deputy regional director, to approve any application for permission to merge or consolidate with any other bank or institution or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in any other bank, institution, or branch of a foreign bank (hereafter *merger transaction*) where the applicant satisfies the requisites listed in paragraph (b)(7) of this section and

(subject to paragraph (b)(6) of this section) where:

(i) The resulting institution, upon consummation of the merger transaction, would not have more than 15% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s); or

(ii) The resulting institution, upon consummation of the merger transaction, would not have more than 25% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(2) Except as provided in paragraph (b)(4) of this section, authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to approve applications for merger transactions where the resulting institution, upon consummation of the merger transaction, would not have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s), and the Attorney General has determined that the proposed merger transaction would not have a significantly adverse effect on competition.

(3) In cases where applicable, the delegate will review any reports on the competitive factors involved in the merger transaction that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Director OTS and the Attorney General may have provided in response to a request for such reports by the FDIC. In the absence of a formal written opinion by the Attorney General, the delegate may also request the FDIC's General Counsel or designee to provide a formal written opinion on the question whether the merger transaction may have a significantly adverse effect on competition. However, the authority delegated under paragraphs (b)(1)(ii) and (2) of this section

may not be exercised in the absence of a formal written opinion by the Attorney General where the resulting bank, upon consummation of the merger transaction, would have more than 15% of the individual, partnership, and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s).

(4) The delegations contained in paragraphs (b)(1) and (2) of this section to approve applications for merger transactions do not extend to such applications:

(i) Falling within the scope of the *probable failure* or *emergency* provisions of 12 U.S.C. 1828(c)(6); or

(ii) Where the resulting institution, upon consummation of the merger transaction, does not meet the capital requirements set forth in 12 CFR part 325 and the FDIC's "Statement of Policy on Capital." (If the applicant is a foreign bank, the delegated authority to approve does not extend to instances where, upon consummation of the merger transaction, the foreign bank's insured branch is not in compliance with 12 CFR part 346.)

(5) The authority to approve an application may not be subdelegated to a regional director or deputy regional director where a protest (as that term is defined in §303.0(b)(30)) under the Community Reinvestment Act is filed.

(6) Where the merging institutions operate in different relevant market areas, then the limitations relative to market share percentages set forth in paragraphs (b)(1) and (2) of this section do not apply.

(7) The requisites which must be satisfied before the authority delegated by paragraphs (b)(1) and (2) of this section to approve applications for merger transactions may be exercised are:

(i) That the statutory factors contained in section 18(c)(5) (12 U.S.C. 1828(c)(5) of the Act have been considered and favorably resolved; and

(ii) Compliance with the National Environmental Policy Act (42 U.S.C. 4321), the Community Reinvestment Act (12 U.S.C. 2901 through 2905) and the applicable implementing regulation (12 CFR part 345 or any other applicable implementing regulation) have been considered and favorably resolved.

(8) In approving an application for a merger transaction under this section, a delegate may impose any of the standard conditions listed in §303.0(b)(31), or any other condition to which the applicant has agreed in writing.

(9) Notwithstanding any limitation or condition imposed by this section, the Director (DOS), and where confirmed in writing by the director, an associate director, or the appropriate regional director or deputy regional director is authorized to approve any transaction involving a merger facilitated by the Resolution Trust Corporation under its authority to assist savings associations in default or in danger of default, provided that the resulting entity from the merger is a state-chartered insured non-member bank.

(c) *Notices of acquisition of control.* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to issue a written notice of the FDIC's intent not to disapprove an acquisition of control of an insured depository institution.

(2) The authority delegated by paragraph (c)(1) of this section shall include the power:

(i) To act in situations where information is submitted on acquisitions arising out of testate or intestate succession, bona fide gifts, or foreclosure;

(ii) To extend notice periods;

(iii) To determine the informational adequacy of a notice;

(iv) To determine whether a notice should be filed under section 7(j) of the Act (12 U.S.C. 1817(j)) by a person acquiring less than 25 percent of any class of voting securities of an insured depository institution; and

(v) To waive publication, waive or shorten the public comment period, or act on a proposed acquisition of control prior to the expiration of the public comment period, as provided in 12 CFR 303.4(b)(3).

(3) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to disapprove an acquisition of control of an insured state depository institution.

(d) *Deposit insurance applications*—(1) *Proposed or newly organized depository institutions.* (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or subject to the limitations set forth in paragraph (d)(1)(iii) of this section, to the appropriate regional director or deputy regional director, to approve applications for deposit insurance by proposed or newly organized depository institutions, where the applicant satisfies the requisites listed in paragraph (d)(1)(ii) of this section, and agrees in writing to comply with any condition imposed by the delegate, other than those listed in paragraph (d)(4) of this section. *Provided however;* That the requisites listed in paragraph (d)(1)(ii) of this section do not apply to any transaction facilitated by the Resolution Trust Corporation under its authority to assist savings associations in default or in danger of default.

(ii) The requisites which must be satisfied before the authority delegated by paragraph (d)(1)(i) of this section to approve applications for deposit insurance by proposed or newly organized depository institutions may be exercised are:

(A) (1) As to Federal savings associations, factors (1) through (5) of the seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have each been considered and favorably resolved, and the FDIC has received from the Director of the Office of Thrift Supervision the certificate required under section 5 of the Act (12 U.S.C. 1815);

(2) As to all other depository institutions, each of the seven factors set forth in section 6 of the Act (12 U.S.C. 1816) has been considered and favorably resolved; and

(B) The requirements set forth below are met:

(1) Equity capital is not less than \$1,000,000;

(2) Legal fees and other expenses incurred in connection with the proposal are determined to be reasonable;

(3) No unresolved *management interlocks*, as prohibited by the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*), part 348 of this chapter (12 CFR part 348) or any

other applicable implementing regulation, exist;

(4) The projected ratio of equity capital and reserves to assets, including projected profits and losses, is at least 10 percent at the end of the third year of operations;

(5) Profitable operations are projected at least for the third year of operations;

(6) The proposed aggregate direct and indirect investment in fixed assets is determined to be reasonable relative to the applicant's proposed equity capitalization, projected earnings capacity, and other pertinent bases of consideration;

(7) Any financial arrangements made or proposed in connection with the proposed depository institution involving the applicant's directors, officers, 5 percent shareholders or their interests are determined to be fair and made on substantially the same terms as those prevailing at the time for comparable transactions with noninsiders and do not involve more than normal risk or present other unfavorable features. The applicant also must have fully disclosed, or agreed to disclose fully, any such arrangement to all of its proposed directors and shareholders prior to the opening of the depository institution;

(8) Stock financing arrangements, fidelity coverage and accrual accounting conform to the guidelines established in the FDIC's policy statement on "Applications for Deposit Insurance;" and

(9) Compliance with the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901 through 2905) and the applicable implementing regulation (12 CFR part 345 or any other implementing regulation) is adequate and favorably resolved.

(iii) The authority to approve an application may not be subdelegated to a regional director or deputy regional director where:

(A) A protest (as that term is defined in §303.0(b)(30)) under the Community Reinvestment Act is filed; or

(B) (1) There is direct or indirect financing, by proposed directors and officers and 5 percent or more shareholders, of more than 75 percent of the purchase price of the stock subscribed to by any one shareholder;

(2) There is aggregate financing of stock subscriptions in excess of 50 percent of the total capital offered, or

(3) Warehoused or trustee stock exceeds 10 percent of initial capital funds.

(2) *Operating noninsured depository institutions and state or privately insured institutions.* (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or, for applicant institutions with total assets of less than \$250,000,000, to the appropriate regional director or deputy regional director, to approve applications for deposit insurance by operating noninsured depository institutions, or state-insured or privately insured institutions where the applicant satisfies the requisites listed in paragraph (d)(2)(ii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section.

(ii) The requisites which must be satisfied before the authority delegated by paragraph (d)(2)(i) of this section to approve applications for deposit insurance by operating noninsured depository institutions may be exercised are:

(A) The applicant is determined to be eligible for federal deposit insurance for the class of institution to which the applicant belongs in the state (as defined in 12 U.S.C. 1813(a)) in which the applicant is located;

(B) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved;

(C) The applicant meets the minimum capital requirements as set forth in part 325 of this chapter (12 CFR part 325) and the FDIC's "Statement of Policy on Capital" or agrees in writing to increase capital so as to be in compliance with the requirements of 12 CFR part 325 before or at the time deposit insurance becomes effective;

(D) All *management interlocks* as prohibited by part 348 of this chapter (12 CFR part 348) or any other applicable

implementing regulation have been resolved; and

(E) The applicant has no fewer than five directors.

(3) *Banks withdrawing from Federal Reserve System.* Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director and deputy regional director, to approve applications for deposit insurance by state non-member banks that have withdrawn from membership in the Federal Reserve System where the applicant agrees in writing to comply with any condition imposed by the delegate other than those listed in paragraph (d)(4) of this section and satisfies the following requisites;

(i) The seven factors set forth in section 6 of the Act (12 U.S.C. 1816) have been considered and favorably resolved; and

(ii) The bank has agreed to continue any corrective program imposed by the Board of Governors of the Federal Reserve System or previously agreed to by the bank where the bank is not in material compliance with that corrective program.

(4) *Conditions for exercise of delegated authority.* The conditions which may be imposed by a delegate in approving applications for deposit insurance without affecting the authority granted under paragraphs (d)(1), (2), and (3) of this section are:

(i) The applicant has provided a specific amount and a specific allocation of beginning paid-in capital;

(ii) Any changes in proposed management or proposed ownership to the extent of 5 or more percent of stock, including new acquisitions of or subscriptions to 5 or more percent of stock shall be approved by the FDIC prior to the opening of the depository institution;

(iii) The applicant adopts an accrual accounting system for maintaining the books of the depository institution;

(iv) Where applicable, Federal deposit insurance will not become effective until the applicant has been established as a state bank (not a member of the Federal Reserve System), has authority to conduct a banking business, and its establishment and operation as

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a bank have been fully approved by the state banking authority;

(v) Where applicable, federal deposit insurance will not become effective until the applicant has been established as a state savings association, has authority to conduct a savings association business, and its establishment and operation as a savings association have been fully approved by the appropriate state supervisory authority;

(vi) Where applicable, a registered or proposed bank holding company, or a registered or proposed thrift holding company, has obtained approval of the Board of Governors of the Federal Reserve System to acquire voting stock control of the proposed bank prior to its opening;

(vii) Where applicable, the applicant, has submitted any proposed contracts, leases, or agreements relating to construction or rental of permanent quarters to the appropriate regional director for review and comment;

(viii) Where applicable, full disclosure has been made to all proposed directors and stockholders of the facts concerning the interest of any insider (one who is or stands to be a director, an officer, or an incorporator of an applicant or shareholder who directly or indirectly controls 5 or more percent of any class of the applicant's outstanding voting stock, or the associates and interests of any such person) in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved;

(ix) The person(s) selected to serve as the principal operating officer(s) shall be acceptable to the regional director;

(x) The applicant has obtained adequate blanket bond coverage;

(xi) That the depository institution obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance is effective, furnish a copy of any reports by the independent auditor (including any management letters) to the appropriate FDIC regional office within 15 days after their receipt by the depository institution and notify the appropriate FDIC regional office within 15

days when a change in its independent auditor occurs; and

(xii) Any standard condition (as defined in § 303.0(b)(31)).

(e) *Applications pursuant to section 19 of the Act.* (1) Authority is delegated to the Director (DOS), or where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications made by insured depository institutions pursuant to section 19 of the Act (12 U.S.C. 1829) for participation, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution by any person who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust; *Provided however,* That authority may not be delegated to the regional director or deputy regional director where the applicant depository institution's primary supervisory authority interposes any objection to such application.

(2)(i) Authority is delegated to the Director (DOS), and where confirmed by writing by the director, to an associate director, to deny applications made by insured depository institutions pursuant to section 19 of the Act.

(ii) The authority delegated under paragraph (e)(2)(i) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 19 of the Act.

(iii) An applicant may still request a hearing following a denial of the application under this paragraph in accordance with the provisions of part 308 of this chapter (12 CFR part 308).

(3) The conditions which may be imposed by a delegate in approving applications pursuant to section 19, without affecting the authority granted under paragraph (e)(1) of this section are:

(i) That an employee shall be bonded to the same extent as others in similar positions; and

(ii) That, when deemed necessary, the prior consent of the appropriate regional director shall be required for

any proposed significant changes in duties and/or responsibilities of the individual occurring within 12 months subsequent to the approval of the application.

(f) *Insurance fund conversions, applications pursuant to section 38 of the Act (prompt corrective action), and other applications.* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to approve or to deny the following applications, requests or petitions:

(i) Applications to establish and operate any new teller's window, drive-in facility, or any like office, as an adjunct to a main office or a branch office (including offices not considered branches under state law);

(ii) Applications to operate temporary banking facilities as a public service for a period not to exceed ninety days during conventions, state and local fairs, college registration periods, and similar occasions, as well as during emergencies;

(iii) Applications filed pursuant to section 18(i)(1) of the Act to reduce the amount or retire any part of common or preferred capital stock, or retire any part of capital notes or debentures;

(iv) Requests for approval of any deviations from requirements prescribed by prior delegated action (to be acted upon by the delegate who acted previously in the matter);

(v) Except as provided in § 303.10(b)(1)(iii) of this part, applications for *phantom mergers*⁸ and other mergers which are corporate reorganizations, *i.e.*, transactions involving institutions controlled by the same holding company or transactions involving institutions and their subsidiaries which would have no effect on competition or otherwise have signifi-

cance under relevant statutory standards as set forth in 12 U.S.C. 1828(c);

(vi) Applications for deposit insurance filed by proposed state non-member banks or savings associations which are formed in connection with a phantom merger;

(vii) Requests to establish management official interlocks pursuant to 12 CFR 348.4(b) of this chapter or section 205(8) of the Depository Institutions Management Interlocks Act (except that a regional director or deputy regional director may deny such a request only if the request was made pursuant to 12 CFR 348.4(b)(3)); and

(viii) Applications pursuant to section 29 of the Act (12 U.S.C. 1831) for waiver of the prohibition on the acceptance or renewal of brokered deposits by troubled insured depository institutions.

(ix) Applications filed pursuant to section 38 of the Act (prompt corrective action), including applications to make a capital distribution; applications for acquisitions, branching, and new lines of business (except that the delegation is limited to the authority as delegated to approve or deny any concurrent application filed pursuant to 18 (c) or (d)); applications to pay a bonus or increase compensation; applications for an exception to pay principal or interest on subordinated debt; and applications to engage in any restricted activity listed in § 303.5(e)(5).

(2) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director:

(i) To deny a request to establish a management official interlock pursuant to any provision of either 12 CFR 348.4(b) of this chapter, or section 205(8) of the Depository Institutions Management Interlocks Act; and

(ii) To approve or to deny applications for the acquisition and holding of stock or other evidences of ownership in a foreign bank or other financial entity that results in less than 25 percent ownership interest in such bank or entity.

(3)(i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to approve an application

⁸As used in this part 303, the term *phantom merger* applies to any merger or other transaction involving an existing operating institution and a newly chartered institution or corporation which is for the purpose of corporate reorganization and which would have no effect on competition or otherwise have significance under the relevant statutory standards as set forth in 12 U.S.C. 1828(c).

made by an applicant pursuant to section 8(j) of the Act (12 U.S.C. 1818(j)) for the termination or modification of a removal or prohibition order, which was issued by the Board after a hearing, on default, or by consent.

(ii) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to consent to an application pursuant to section 8(j) of the Act (12 U.S.C. 1818(j)) to obtain the prior written approval of the FDIC to participate in the conduct of the affairs of a bank filed by an individual subject to a removal or prohibition order.

(iii) Authority is delegated to the Director (DOS), or where confirmed in writing by the director, to an associate director, to deny an application made by an applicant pursuant to section 8(j) of the Act.

(iv) The authority delegated under paragraphs (f)(3)(i), (ii), and (iii) of this section shall be exercised only upon the concurrent certification by the Deputy General Counsel for Supervision and Legislation, or the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(j) of the Act.

(4)(i) Authority is delegated to the Director (DOS) and, where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director to approve or deny conversions involving transfers of deposits between the SAIF and BIF funds; *Provided however*, That where the basis for the conversion is that the transaction affects an insubstantial portion of the deposits of each institution, authority is not delegated to the regional director or deputy regional director where the total deposits transferred to or from either institution, accumulated with all other insurance fund transfers involving that institution since August 9, 1989, exceeds the lesser of 35 percent of total deposits of either institution on May 1, 1989, plus net interest credited to the expected date of transfer, or the amount equal to total deposits of either institution on the expected date of transfer.

(ii) The conditions that may be imposed in approving applications for insurance fund conversions without af-

fecting the authority granted in § 303.7(f)(4) of this section are:

(A) That, upon consummation, the deposits involved in the transaction do not exceed 35%, on a cumulative basis with other deposits transferred between the SAIF and BIF funds, for either of the institutions involved, of the lesser of (1) total deposits as of May 1, 1989, plus net interest credited during the period from May 1, 1989, to the date of transfer of the deposits, or (2) total deposits of the institution as of the date of transfer of the deposits; and

(B) That applicable entrance and exit fees be paid pursuant to FDIC regulations.

(5) Authority is delegated to the Director (DOS) and, where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director to:

(i) Determine whether applicants requesting approval under section 5(d)(3)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)(A)(i)) meet all minimum capital requirements contained in 12 CFR part 325;

(ii) Approve applications where the applicant satisfies the requirements specified in paragraph (f)(5)(i) of this section and the requirements of section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)); and

(iii) Deny such applications if the requirements specified in paragraph (f)(5)(i) of this section are not met.

(6) In approving an application, request or petition under any provision of this paragraph, a delegate may impose any of the standard conditions listed in § 303.0(b)(31), or any other condition to which the applicant has agreed in writing.

(g) *Requests pursuant to section 18(k) of the Act.* Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve or deny requests pursuant to section 18(k) of the Act to make:

(1) Excess nondiscriminatory severance plan payments as provided by 12 CFR 359.1(f)(2)(v); and

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(2) Golden parachute payments permitted by 12 CFR 359.4.

[54 FR 53562, Dec. 29, 1989, as amended at 57 FR 5815, Feb. 18, 1992; 58 FR 8217, Feb. 12, 1993; 59 FR 52663, Oct. 19, 1994; 61 FR 5930, Feb. 15, 1996]

§ 303.8 Other delegations of authority.

(a) *Extensions of time.* (1) Except as provided in paragraph (a)(2) of this section, authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to approve and to deny requests for extensions of time, not to exceed one year on any one request relating to the same application, within which to perform acts or conditions required by prior FDIC action on depository institution applications.

(2) Notwithstanding the delegations in paragraph (a)(1) of this section, no delegate shall have the authority to deny an extension of time request unless that delegate had authority to deny the original application upon which the extension of time is predicated.

(b) *Disclosure laws and regulations.* (1) Except as provided in paragraph (b)(2) of this section, authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to act on disclosure matters under and pursuant to sections 12, 13, 14, 17 and 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78) or parts 335 and 341 of this chapter (12 CFR parts 335 and 341).

(2) Authority to act on disclosure matters is retained by the Board of Directors when such matters involve:

(i) Exemption from disclosure requirements pursuant to section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 781(h));

(ii) Exemption from tender offer requirements pursuant to section 14(d)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)(8)); or

(iii) Exemption from registration requirements pursuant to section 17A(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1(c)(1)).

(c) *Security devices and procedures and bank service arrangements.* Authority is delegated to the Director (DOS) and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to administer the provisions of part 326 of this chapter (12 CFR part 326).

(d) *In emergencies.* For the purpose of assuring performance of, and continuity in the management functions and activities of the FDIC, the Board of Directors has delegated, to the extent deemed necessary, authority with respect to the management of the FDIC's affairs, to certain designated offices, such authority to be exercised only in the event of an emergency involving an enemy attack on the continental United States or other warlike occurrence which renders the Board of Directors unable to perform the management functions and activities normally performed by it.

(e) *Competitive factor reports.* Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the regional director or deputy regional director in the appropriate FDIC region in which the applicant depository institution⁹ is located, to furnish required reports to the Board of Governors of the Federal Reserve System, or the Comptroller of the Currency on the competitive factors involved in any merger required to be approved by one of those agencies, if the delegate is of the view that the proposed merger would not have a substantially adverse effect on competition.

(f) *Agreements for pledge of assets by foreign banks.* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into pledge agreements with foreign banks and depositories in connection with the pledge of asset requirements pursuant

⁹As used in paragraph (e) of this section, the term *applicant depository institution* means the institution which is applying for merger approval to the Board of Governors of the Federal Reserve System the Comptroller of the Currency, or the Director of OTS, whichever is applicable.

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to 12 CFR 346.19. This authority shall also extend to the power to revoke such approval and require the dismissal of the depository.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model deposit agreement used for such deposit agreements.

(g) *National Historic Preservation Act.*

(1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into memoranda of agreement pursuant to regulations of the Advisory Council of Historic Preservation which implement the National Historic Preservation Act (16 U.S.C. 470).

(2) The Director (DOS) may limit the delegation of authority to the associate director, the regional director or deputy regional director to applications wherein the applicant has agreed in writing to conditions relating to the National Preservation Act which may be imposed by the FDIC.

(h) *Applications or notices for membership or resumption of business.* Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to provide comments on applications or notices for membership or commencement or resumption of business to the appropriate Federal banking agency pursuant to section 4 of the Act (12 U.S.C. 1814). Such comments, if provided, shall be provided within a reasonable time, not to exceed 30 days from the time such application or notice is received by the delegate. In the event that circumstances preclude comment within 30 days, the delegate shall so notify the appropriate Federal banking agency within 30 days, giving an estimate of when comments may reasonably be expected.

(i) *Depository Institutions Disaster Relief Act of 1992 (DIDRA).* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to accept requests and issue orders permitting an insured depository institution to sub-

tract from total assets the qualifying amount attributable to insurance proceeds for purposes of calculating compliance with the leverage limit prescribed under section 38 of the Act.

(2) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to act on requests for reconsideration of an order of denial issued pursuant to paragraph (i)(1) of this section.

(3) The requisites which must be satisfied before the authority delegated in paragraphs (i)(1) and (i)(2) of this section may be exercised, provide that the insured depository institution:

(i) Had its principal place of business within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), has determined that a major disaster exists;

(ii) Derives more than 60 percent of its total deposits from persons who normally reside within, or whose principal place of business is normally within, areas of intense devastation caused by the major disaster;

(iii) Was adequately capitalized, pursuant to section 38 of the Act, prior to the major disaster; and

(iv) Has an acceptable plan for managing the increase in its total assets and total deposits.

(4) The authority delegated under paragraphs (i)(1) and (i)(2) of this section shall be exercised only upon the concurrent certification of the Associate General Counsel for Compliance and Enforcement, or in cases where the regional director or deputy regional director issues the order, by the appropriate regional counsel, that the order is not inconsistent with section 38 of the Act.

[54 FR 53567, Dec. 29, 1989, as amended at 58 FR 8217, Feb. 12, 1993; 59 FR 52663, Oct. 19, 1994]

§ 303.9 Delegation of authority to act on certain enforcement matters.

(a) *Actions pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or

deputy regional director, to issue notifications to primary regulator when the respondent bank's book capital is less than 2% of total assets; Provided however, That authority may not be delegated to the regional director or deputy regional director whenever the respondent bank has issued any mandatory convertible debt or any form of Tier 2 capital (such as limited life preferred stock/subordinated notes and debentures).

(2) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to issue notifications to primary regulator when the respondent bank's adjusted Tier 1 capital is less than 2% of adjusted part 325 total assets.

(3) The authority delegated under paragraphs (a)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement or, in cases where a regional director or deputy regional director issues notifications to primary regulator, by the appropriate regional counsel, that the allegations contained in the findings of unsafe or unsound practices or conditions, if proven, constitute a basis for the issuance of a notification to primary regulator pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).

(b) *Actions pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)).* (1) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, or to the appropriate regional director, deputy regional director or regional manager to issue:

- (i) Notices of charges; and
- (ii) Cease-and-desist orders (with or without a prior notice of charges) where the respondent bank or individual respondent consents to the issuance of the cease-and-desist order prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and recommended decision with the Executive Secretary of the FDIC.

(2) The Director (DOS) and the Director (DCA) may issue a joint notice of charges or cease-and-desist order under

paragraph (b)(1) of this section, where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or, alternatively, the signatures of the appropriate regional director or deputy regional director and regional manager.

(3) The authority delegated under paragraphs (b)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement or, in cases where a regional director, deputy regional director or regional manager issues the notice of charges or the stipulated cease-and-desist order, by the appropriate regional counsel, that the allegations contained in the notice of charges, if proven, constitute a basis for the issuance of a section 8(b) order, or that the stipulated cease-and-desist order is authorized under section 8(b) of the Act, and, upon its effective date, shall be a cease-and-desist order which has become final for purposes of enforcement pursuant to the Act.

(c) *Actions pursuant to section 8(c) of the Act (12 U.S.C. 1818(c)).* (1) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to issue temporary cease-and-desist orders.

(2) The Director (DOS) and the Director (DCA) may issue a joint temporary cease-and-desist order where such order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or, alternatively, the signatures of the appropriate regional director or deputy regional director and regional manager.

(3) The authority delegated under paragraphs (c)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the action is not inconsistent with section 8(c) of the Act (12 U.S.C. 1818(c)) and the temporary cease-and-desist order is enforceable in a United States District Court.

(d) *Actions pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)).* (1) Authority is delegated to the Director (DOS) or

the Director (DCA), and where confirmed in writing by the director, to an associate director, to issue:

(i) Notices of intention to remove an institution-affiliated party from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of an insured depository institution pursuant to sections 8(e)(1) and (2) of the Act (12 U.S.C. 1818(e)(1) and (2)), and temporary orders of suspension pursuant to section 8(e)(3) of the Act (12 U.S.C. 1818(e)(3)); and

(ii) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution where the institution-affiliated party consents to the issuance of such orders prior to the filing by an administrative law judge of proposed findings of fact, conclusions of law and a recommended decision with the Executive Secretary of the FDIC.

(2) The Director (DOS) and the Director (DCA) may issue joint notices and orders pursuant to paragraph (d)(1) of this section where such notice or order addresses both safety and soundness and consumer compliance matters. A joint notice or order will require the signatures of both directors or their associate directors.

(3) The authority delegated under paragraphs (d)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a notice of intent pursuant to section 8(e) of the Act, or that the stipulated section 8(e) order is not inconsistent with section 8(e) of the Act, and, upon issuance, shall be an order which has become final for purposes of enforcement pursuant to the Act.

(e) *Actions pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)).* (1) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to issue orders of suspension or prohibition to an institution-affiliated party who is charged in any information, indictment, or complaint as set forth in section 8(g) of the

Act when such institution-affiliated party consents to the suspension or prohibition.

(2) The Director (DOS) and the Director (DCA) may issue joint orders pursuant to paragraph (e)(1) of this section where such order addresses both safety and soundness and consumer compliance matters. A joint order will require the signatures of both directors or their associate directors.

(3) The authority delegated under paragraphs (e)(1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(g) of the Act (12 U.S.C. 1818(g)) and the order is enforceable in a United States District Court pursuant to sections 8(i) and 8(j) of the Act (12 U.S.C. 1818 (i) and (j)).

(f) *Actions pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).* (1) Authority is delegated to the Executive Secretary to issue consent orders terminating the insured status of insured depository institutions that have ceased to engage in the business of receiving deposits other than trust funds pursuant to section 8(p) of the Act (12 U.S.C. 1818(p)).

(2) The authority delegated under paragraph (f)(1) of this section shall be exercised only upon the recommendation and concurrence of the Director (DOS) or associate director and the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with section 8(p) of the Act.

(g) *Civil money penalties.* (1)(i) Except as provided for in paragraph (g)(3) of this section, authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to issue notices of assessment of civil money penalties.

(ii) The authority delegated under paragraph (g)(1)(i) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of assessment, if proven, constitute a basis for assessment of civil money penalties.

(2) The Director (DOS) and the Director (DCA) may issue joint notices pursuant to paragraph (g)(1) of this section where such notice addresses both safety and soundness and consumer compliance matters. A joint notice will require the signatures of both directors or their associate directors.

(3) Authority is delegated to the General Counsel or designee for the levying and enforcement of civil money penalties under section 7(a)(1) of the Act (12 U.S.C. 1817(a)(1)) for the late, inaccurate, false or misleading filing of Reports of Condition and Report of Income, and such other reports as the Board of Directors may require under the authority of that section. In the exercise of the delegated authority, the General Counsel or designee shall consult with the appropriate Director or associate director before imposing any penalty.

(h) *Directives and capital plans under section 38 of the Act (prompt corrective action) and part 325 of this chapter.* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or revised capital restoration plans or to make any other determinations with respect to the implementation of capital restoration plans and, in accordance with subpart Q of part 308 of this chapter, to issue:

(i) Notices of intent to issue capital directives;

(ii) Directives to insured state non-member banks that fail to maintain capital in accordance with the requirements contained in part 325 of this chapter;

(iii) Notices of intent to issue prompt corrective action directives, except directives issued pursuant to section 38(f)(2)(F)(ii) of the Act (12 U.S.C. 1831o(f)(2)(F)(ii));

(iv) Directives to insured depository institutions pursuant to section 38 of the Act (12 U.S.C. 1831o), with or without the consent of the respondent bank to the issuance of the directive, except directives issued pursuant to section 38(f)(2)(F)(ii) of the Act (12 U.S.C. 1831o(f)(2)(F)(ii));

(v) Directives to insured depository institutions requiring immediate action or imposing proscriptions pursuant to section 38 of the Act (12 U.S.C. 1831o) and part 325 of this chapter, and in accordance with the requirements contained in § 308.201(a)(2) of this chapter;

(vi) Notices of intent to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter;

(vii) Directives to reclassify insured banks pursuant to §§ 325.103(d) and 308.202 of this chapter with the consent of the respondent bank to the issuance of the directive; and

(viii) Orders on request for informal hearings to reconsider reclassifications and designate the presiding officer at the hearing pursuant to § 308.202 of this chapter.

(2) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an Associate Director, to:

(i) Issue notices of intent to issue a prompt corrective action directive ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the Act, (12 U.S.C. 1831o(f)(2)(F)(ii)), and in accordance with the requirements contained in § 308.203 of this chapter;

(ii) Issue directives ordering the dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the Act, (12 U.S.C. 1831o(f)(2)(F)(ii));

(iii) Issue orders of dismissal from office of a director or senior executive officer pursuant to section 38(f)(2)(F)(ii) of the Act, 12 U.S.C. 1831o(f)(2)(F)(ii) where the individual consents to the issuance of such order prior to the filing of a recommendation by the presiding officer with the FDIC;

(iv) Act on recommended decisions of presiding officers pursuant to a request for reconsideration of a reclassification in accordance with the requirements contained in § 308.202 of this chapter;

(v) Act on requests for rescission of a reclassification; and

(vi) Act on appeals from immediately effective directives issued pursuant to section 38 of the Act, (12 U.S.C. 1831o) and § 308.201 of this chapter.

(3) Authority is delegated to the Executive Secretary of the FDIC to issue

orders for informal hearings and designate presiding officers on directives issued pursuant to section 38(f)(2)(F)(ii) of the Act, 12 U.S.C. 1831o(f)(2)(F)(ii).

(4) The authority delegated under paragraphs (h)(1)(i) and (ii) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director issues the notice of intent to issue a capital directive or capital directives, by the appropriate regional counsel, that the action taken is not inconsistent with the Act and part 325 of this chapter.

(5) The authority delegated under paragraphs (h)(1) (iii), (iv), (v), (vi) and (vii) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director issues the notice of intent to issue a prompt corrective action directive or prompt corrective action directives, or the notice of intent to reclassify or reclassification directive, by the appropriate regional counsel, that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final directive pursuant to section 38 of the Act, or that the issuance of a final directive is not inconsistent with section 38 of the Act.

(6) The authority delegated under paragraph (h)(2) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final directive pursuant to section 38 of the Act or that the issuance of a final directive is not inconsistent with section 38 of the Act or that the stipulated section 38 order is not inconsistent with section 38 and is an order which has become final for purposes of enforcement pursuant to the Act.

(i) *Investigations pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)).* (1) Authority is delegated to the Director (DOS), to the Director (DCA), to the Director of the Division of Depositor and Asset Services, and where con-

firmed in writing by the director, to an associate director, or to the appropriate regional director, deputy regional director or regional manager, to issue an order of investigation pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)) and subpart K of Part 308 (12 CFR 308.144 through 308.150).

(2) Authority is delegated to the General Counsel, and where confirmed in writing by the General Counsel, to his designee, to issue an order of investigation pursuant to section 10(c) of the Act (12 U.S.C. 1820(c)) and subpart K of Part 308 (12 CFR 308.144 through 308.150).

(3) In issuing an order of investigation that pertains to an open insured depository institution or an institution making application to become an insured depository institution, the authority delegated under paragraphs (i)(1) and (2) of this section shall be exercised only upon the concurrent execution of the order of investigation by the Director (DOS) or the Director (DCA), or their associate directors, or the appropriate regional director, deputy regional director or regional manager, and the General Counsel or designee. In the case of a joint order of investigation, such authority shall be exercised only upon the concurrent execution of the order of investigation by both directors, or their associate directors, or the appropriate regional director, deputy regional director and regional manager, and the General Counsel or designee.

(j) *Truth in Lending Act.* (1) Authority is delegated to the Director (DCA), and where confirmed in writing by the director, to the associate director, or to the appropriate regional manager, to deny requests for relief from the requirements for reimbursement under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1607(e)(2)); Provided however, that a regional manager is not authorized to deny any request where the estimated amount of reimbursement is greater than \$25,000.

(2) Authority is delegated to the Director (DCA), and where confirmed in writing by the director, to an associate director:

(i) To grant request for relief from the requirements for reimbursement

under section 608(a)(2) of the Truth in Lending Simplification and Reform Act (15 U.S.C. 1670(a)(2)); and

(ii) To act on applications for reconsideration of any action taken under paragraphs (j) (1) and (2) of this section.

(3) The authority delegated under paragraphs (j) (1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement, or, in cases where a regional manager denies requests for relief, by the appropriate regional counsel, that the action taken is not inconsistent with the Truth in Lending Simplification and Reform Act.

(k) *Unilateral settlement offers.* (1) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to accept, deny or enter into negotiations for unilateral settlement offers with insured depository institutions, or with an institution-affiliated party, pertaining to a proceeding under 12 CFR part 308. In cases where a proceeding under 12 CFR part 308 was issued jointly by DOS and DCA, both directors, or their associate directors, must agree to accept, deny or enter into negotiations for unilateral settlement offers with insured depository institutions or with an institution-affiliated party.

(2) The authority delegated under paragraph (k)(1) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with the Act.

(l) *Acceptance of written agreements.* (1) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, to accept or enter into any written agreements with insured depository institutions, or any institution-affiliated party pertaining to any matter which may be addressed by the FDIC pursuant to section 8(a) of the Act (12 U.S.C. 1818(a)).

(2) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, to accept or enter into any written

agreements with insured depository institutions, or any institution-affiliated party pertaining to any safety and soundness or consumer compliance matter which may be addressed by the FDIC pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)) or any other provision of the Act which addresses safety and soundness or consumer compliance matters. In cases which would address both safety and soundness and consumer compliance matters, the Directors, or their designees, may accept or enter into joint written agreements with insured depository institutions or institution-affiliated parties.

(3) The authority delegated under paragraphs (1) (1) and (2) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement that the action taken is not inconsistent with sections 8 (a) and (b) of the Act.

(m) *Modifications and terminations of enforcement actions—*(1) *Sections 8(a), 8(b) and 8(c) (12 U.S.C. 1818 (a), (b) and (c)) actions upon failure or merger of a depository institution.* (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate outstanding section 8(a) orders and agreements and to terminate actions and agreements which are pending pursuant to section 8(a) of the Act when the depository institution is closed by a Federal or state authority or merges into another institution.

(ii) Authority is delegated to the Director (DOS), to the Director (DCA), and where confirmed in writing by either director, to an associate director, or to the appropriate regional director, deputy regional director or regional manager, to terminate outstanding section 8(b) and section 8(c) orders and agreements and to terminate actions and agreements which are pending pursuant to sections 8(b) and 8(c) of the Act when the depository institution is closed by a Federal or state authority or merges into another institution. In cases where a joint order was issued by DOS and DCA, both directors, or their associate directors, or the appropriate

regional director or deputy regional director and regional manager, must agree prior to the termination of outstanding 8(b) and 8(c) orders.

(2) *Section 8(a) (12 U.S.C. 1818(a)) actions issued by the Board of Directors.* (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to modify or terminate notifications to primary regulator issued by the Board of Directors pursuant to section 8(a) of the Act where the respondent depository institution is in material compliance with such notification or for good cause shown.

(ii) In cases where the Board of Directors has issued a notice of intent to terminate insured status pursuant to section 8(a) of the Act, authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to terminate the actions pending pursuant to such notice of intent to terminate insured status where the respondent depository institution is in material compliance with the applicable notification to primary regulator or for good cause shown.

(3) *Section 8(b) (12 U.S.C. 1818(b)) orders issued by the Board of Directors.* Authority is delegated to the Director (DOS) or the Director (DCA), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director, deputy regional director or regional manager, to terminate outstanding section 8(b) orders issued by the Board of Directors where either material compliance with the section 8(b) order has been achieved by the respondent depository institution or individual respondent or for good cause shown. In cases where an order issued by the Board addresses both safety and soundness and consumer compliance matters, both directors, or their designees, must agree prior to the termination of outstanding 8(b) orders.

(4) *Section 8(g) orders issued by the Board of Directors.* Authority is delegated to the Director (DOS) or the Director (DCA), and where confirmed in writing by the director, to an associate

director, to approve requests for modifications or terminations of section 8(g) orders issued by the Board of Directors.

(5) *Other matters not specifically addressed.* For all other outstanding orders or pending actions not specifically addressed in paragraphs (m)(1), (m)(2), (m)(3) and (m)(4) of this section, the delegations of authority contained in paragraphs (a)(1), (a)(2), (b)(1), (c)(1), (d)(1), (e)(1), (g)(1), (g)(2), (h)(1), (h)(2), (l)(1), (l)(2), and (n) of this section shall be construed to include the authority to modify or terminate any outstanding notice, order, directive or agreement, as may be appropriate, issued pursuant to delegated authority and to terminate any pending action initiated pursuant to delegated authority.

(6) *Certification.* Any modifications or terminations pursuant to paragraphs (m)(1), (m)(2), (m)(3), (m)(4), and (m)(5) of this section shall be exercised only upon concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director, deputy regional director or regional manager acts under delegated authority, by the appropriate regional counsel, that the action taken is not consistent with the Act.

(n) *Enforcement of outstanding orders.* After consultation with the Director (DOS) or the Director (DCA), or an associate director, or the appropriate regional director, deputy regional director or regional manager, as may be appropriate, the General Counsel or designee is authorized to initiate and prosecute any action to enforce any effective and outstanding order or temporary order issued under 12 U.S.C. 1817, 1818, 1820, 1828, 1829, 1831i, 1831o, 1972, or 3909, or any provision thereof, in the appropriate United States District Court.

(o) *Compliance plans under section 39 of the Act (standards for safety and soundness) and part 308 of this chapter.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or revised compliance plans or to make any other

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determinations with respect to the implementation of compliance plans pursuant to subpart R of part 308 of this chapter.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to:

(i) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p-1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(ii) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p-1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(iii) Act on requests for modification or rescission of an order.

(3) The authority delegated under paragraph (o)(1) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is not inconsistent with the Act.

(4) The authority delegated under paragraph (o)(2) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the Act or that the issuance of a final order is not inconsistent with section 39 of the Act or that the stipulated section 39 order is not inconsistent with section 39 and is an order which has become final for purposes of enforcement pursuant to the Act.

[59 FR 52663, Oct. 19, 1994, as amended at 60 FR 35683, July 10, 1995]

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§ 303.10 Applications and enforcement matters where authority is not delegated.

(a) *Authority not specifically delegated is retained by the Board of Directors.* (1) Except as otherwise provided in this part, or with respect to matters which generally involve conditions or circumstances requiring prompt action in the field for the better protection of the interests of the FDIC and to achieve flexibility and expedition in its operations and in the exercise of its functions in connection with the FDIC's litigation and liquidation matters and with the payment of claims for insured deposits, the Board of Directors does not delegate its authority and no delegations of final authority are made by the Board of Directors. Any person having a proper and direct concern therein may ascertain the scope of authority of any officer, agent or employee of the FDIC by communicating with the Executive Secretary of the FDIC.

(2) In all cases where authority to act on applications, requests or enforcement matters listed in this part is not delegated to a Director, or to an associate director, or to a regional director, deputy regional director or regional manager"; the authority to act on such applications, requests, or enforcement matters remains vested in the Board of Directors of the FDIC. In addition, the Board of Directors retains the authority to act on any application, request or enforcement matter upon which any member of the Board of Directors wishes to act even if the authority to act on such application, request or enforcement matter has been delegated.

(b) *Applications and requests.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following applications and requests:

(1) Except as provided in § 303.7(b)(9) of this part to deny applications for merger transactions, and to approve applications for merger transactions where:

(i) The applicant does not agree in writing to comply with any conditions imposed by the FDIC (other than the standard condition listed in § 303.0(b)(26) which may be imposed

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without the applicant's written agreement); or

(ii) The resulting bank, upon consummation of the merger transaction, would have more than 35% of the individual, partnership and corporate deposits held by commercial banks and/or thrift institutions, as may be appropriate, in the relevant market(s); or

(iii) Irrespective of the resulting market share, the Attorney General has determined that the proposed merger transaction may have a significantly adverse effect on competition; or

(iv) The application (including an application for phantom bank merger or reorganization) falls within the *probable failure* or *emergency* provisions of section 18(c)(6) of the FDI Act, or the resultant bank does not meet the minimum capital requirements of part 325.

(2) To deny applications for deposit insurance, and to approve applications for deposit insurance where:

(i) The applicant does not agree in writing to comply with any condition imposed by the FDIC (other than the standard conditions listed in §§ 303.0(b)(31), and 303.7(d)(4), which may be imposed without the applicant's written agreement), or

(ii) The applicant depository institution is a United States branch of a foreign bank; and

(3) To consider an application made by an insured depository institution pursuant to section 19 of the Act (12 U.S.C. 1829) for participation, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution or any person who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust following a hearing held in accordance with the provisions of part 308 of this chapter (12 CFR part 308).

(c) *Enforcement matters.* Without limiting the Board of Directors' authority, the Board of Directors has retained the authority to act upon the following enforcement matters:

(1) To issue: (i) Notifications to primary regulator when the respondent bank's book capital is at or above 2% of total assets and adjusted Tier 1 capital is at or above 2% of adjusted part 325 total assets;

(ii) Notices of intent to terminate insured status; and

(iii) Orders terminating insured status, pursuant to section 8(a) of the Act (12 U.S.C. 1818(a));

(2) To issue cease-and-desist orders pursuant to section 8(b) of the Act (12 U.S.C. 1818(b)) when the respondent depository institution or individual does not consent to the issuance of such orders;

(3) To issue: (i) Temporary orders of suspension and prohibition pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)); and

(ii) Orders of removal, suspension or prohibition from participation in the conduct of the affairs of an insured depository institution pursuant to section 8(e) of the Act (12 U.S.C. 1818(e)) when the individual does not consent to the issuance of such orders;

(4) To issue orders of suspension or prohibition to an indicted director, officer or person participating in the conduct of the affairs of an insured depository institution and orders of removal or prohibition to a convicted director, officer or person participating in the conduct of the affairs of an insured depository institution pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)) when such director, officer or person does not consent to the suspension or removal;

(5) To issue final orders to pay civil money penalties where respondents do not consent to the assessment of civil money penalties and hearings have been held;

(6) To deny requests for modifications or terminations of orders issued pursuant to section 8(g) of the Act (12 U.S.C. 1818(g)); and

(7) To grant or deny requests for reinstatement to office, whether or not an informal hearing has been requested, pursuant to § 308.203 of this chapter.

[54 FR 53570, Dec. 29, 1989, as amended at 56 FR 23011, May 20, 1991; 58 FR 8219, Feb. 12, 1993; 59 FR 52667, Oct. 19, 1994]

§ 303.11 Confirmation, limitations, rescissions and special cases.

(a) *Written confirmation, limitations or subsequent rescission.* (1) The authority delegated in §§ 303.7, 303.8 and 303.9 of this part by the Board of Directors to the associate director, the appropriate

regional director or deputy regional director is subject, as to each associate director, regional director and deputy regional director, to written confirmation, limitations, or subsequent rescission of any confirmation, by the Director. Such written confirmation, limitations or rescissions shall be filed with the Executive Secretary of the FDIC at its offices in Washington, DC, and at the office of the regional director or deputy regional director concerned, and shall be available for public inspection by interested parties.

(2) The conditions set forth in this part to which the exercise of delegated authority is subject are procedural in nature only, and shall not be construed as standards or criteria which will be used in determining the merits of a specific application, petition, request or enforcement matter.

(b) *Action under delegated authority not mandated.* (1) The Director (DOS) or the Director (DCA) may, in writing, rescind the authority of an associate director, regional director, deputy regional director or regional manager to act on an application, request, notice of acquisition of control or enforcement matter, and may himself act on the same.

(2)(i) An associate director, regional director, deputy regional director or regional manager may, in writing, recommend that the authority to act on an application, request, notice of acquisition of control or enforcement matter not be exercised by him; in such cases, the authority to act on such application, request, notice of acquisition of control or enforcement matter may be exercised by the Director (DOS) or the Director (DCA). The Director may, in writing, recommend that the authority to act on an application, request, notice of acquisition of control or enforcement matter may not be exercised by him; in such cases the Board of Directors will act on the application, request, notice of acquisition of control or enforcement matter.

(ii) A regional counsel may, in writing, recommend that the authority to act on an application made by insured depository institutions pursuant to section 19 of the Act (12 U.S.C. 1829) or an enforcement matter not be exercised by him; in such cases the author-

ity to act in such enforcement matters may be exercised by the Associate General Counsel for Compliance and Enforcement. The Associate General Counsel for Compliance and Enforcement may, in writing, recommend that the authority to act on an application pursuant to section 19 of the Act or enforcement matter not be exercised by him; in such cases, the Board of Directors will act on the application or enforcement matter.

(iii) Upon determining not to act upon the application, request, notice of acquisition of control or enforcement matter under delegated authority, the regional manager, deputy regional director, regional director, associate director, or the Director (DOS) or the Director (DCA), and/or the regional counsel, or the Associate General Counsel for Compliance and Enforcement, as the case may be, shall forward the application, request, notice of acquisition of control or enforcement matter, together with his recommendations as to the disposition of such application, request, notice of acquisition of control or enforcement matter to the appropriate authority as determined by the rules set forth in paragraphs (b)(2) (i) and/or (ii) of this section.

(c) *Request for review.* Any aggrieved party or person may request the Board of Directors to review any action taken under authority delegated in §§ 303.7, 303.8 and 303.9 of this part.

[54 FR 53570, Dec. 29, 1989, as amended by 59 FR 52667, Oct. 19, 1994]

§ 303.12 OMB control number assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520). The FDIC intends that this section comply with section 3507(f) of the Paperwork Reduction Act (44 U.S.C. 3507(f)), which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

(b) *Display.*

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Section of 12 CFR part 303 where identified and described	Current OMB control No.
303.1	3064.0001
303.1	3064.0069
303.2	3064.0070
303.3	3064.0016
303.4(b)	3064.0019

[54 FR 53571, Dec. 29, 1989]

§ 303.13 Applications and notices by savings associations.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

(1) As used in paragraphs (b) and (c) of this section, the term *activity* includes acquiring or retaining any investment other than an equity investment.

(2) *Control* means the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(3) *Corporate debt securities not of investment grade* refers to any corporate debt security that when acquired was not rated among the four highest rating categories by at least one nationally recognized statistical rating organization. The term shall not include any obligation issued or guaranteed by a corporation that may be held by a federal savings association without limitation as to percentage of assets under subparagraphs (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)).

(4) *Equity investment* means any equity security as defined herein; any partnership interest; any equity interest in real estate as defined herein; and any transaction which in substance falls into any of these categories, even though it may be structured as some other form of business transaction.

(5) *Equity interest in real estate* means any form of direct or indirect ownership of any interest in real property (whether in the form of an equity interest, partnership, joint venture or other form) which is accounted for as an investment in real estate or real estate joint ventures under generally accepted accounting principles or is otherwise

determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council instructions for the preparation of reports of condition. The term *equity interest in real estate* shall not include:

(i) An interest in real property that is primarily used or intended to be used for future expansion by a savings association, its subsidiaries, or its affiliates as offices or related facilities for the conduct of its business;

(ii) An interest in real property that is acquired in satisfaction of a debt previously contracted in good faith, acquired by way of deed in lieu of foreclosure, or acquired in sales under judgments, decrees, or mortgages held by a savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of in a timely fashion as permitted by applicable law; and

(iii) Interests in real property that are primarily in the nature of charitable contributions to community development.

(6) *Equity security* means any stock, (other than adjustable rate preferred stock and money market (auction rate) preferred stock) certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term *equity security* does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(7) *Qualified affiliate* means, in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and, in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as

all of the savings association's investments in, and extensions of credit to, the subsidiary are deducted from the savings association's capital.

(8) The term *service corporation* means any corporation the capital stock of which is available for purchase only by savings associations.

(9) A *significant risk* is understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss.

(10) *Subsidiary* means any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization directly or indirectly controlled by a savings association. For the purposes of § 303.13(f), the term does not include an *insured depository institution* as that term is defined in section 3(c)(2) of the Federal Deposit Insurance Act, (FDI Act, 12 U.S.C. 1813(c)(2)).

(b) *Engaging other than as agent on behalf of customers in activities not permissible for Federal savings associations*—(1) After January 1, 1990, no state savings association may directly engage, other than as agent on behalf of its customers, in an activity that is not expressly authorized for federal savings associations by the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) or any other statute, regulations issued by the Office of Thrift Supervision (OTS), official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS unless the state savings association obtains the approval of the FDIC. Any state savings association that wishes to obtain approval to initiate or continue such an activity, as well as any state savings association that wishes to make, or already has, nonresidential real property loans in an amount exceeding that described in section 5(c)(2)(B) of the HOLA (12 U.S.C. 1464(c)(2)(B)) must file a letter application with the DOS regional director for the region in which the state savings association's principal office is located. The letter application should contain the following information:

(i) A brief description of the activity and the manner in which it is (or will be) conducted;

(ii) A copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(iii) An estimate of the present or expected dollar volume of the activity;

(iv) Resolutions by the board of directors (or the board of trustees in a mutual association) of the savings association authorizing the conduct of such activity and the filing of this submission;

(v) A current statement of the association's assets, liabilities, and capital on both a consolidated and a non-consolidated basis, respectively;

(vi) A discussion by management of its analysis regarding the impact of the proposed activity on the association's earnings, capital adequacy, and general condition;

(vii) A statement by the savings association of whether or not it is in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA (12 U.S.C. 1464(t)), including a calculation of the relevant capital ratio; and

(viii) A statement of the authority the savings association is relying upon for the conduct of the activity in the amount set forth in the letter application.

The regional director may request that the state savings association provide such other information as the director deems appropriate. Approval will not be granted if it is determined by the FDIC that engaging in the activity poses a significant risk to the affected deposit insurance fund. Furthermore, no savings association will be granted approval unless it is in compliance with the fully phased-in capital standards prescribed in section 5(t) of HOLA. Consequently, no application to engage in an activity after January 1, 1990 should be filed if a state association is not in compliance with the fully phased-in capital requirements.

(2) Paragraph (b)(1) of this section shall not be read to require the divestiture by a state savings association of any asset (including a nonresidential real estate loan) it had on its books prior to August 9, 1989 despite the fact that such asset may be held in connection with the conduct of an activity for

which the state savings association must obtain the FDIC's approval under § 303.13(b)(1). A notice describing the activities and those assets is nevertheless required by this section.

(c) *Engaging other than as agent on behalf of customers in activities authorized for Federal savings associations but to an extent not so authorized—*(1) *Activities conducted as of December 29, 1989.* (i) Any state savings association which as of December 29, 1989 is directly engaging, other than as agent on behalf of its customers, in an activity expressly authorized to all federal savings associations by statute or regulation adopted by OTS, or an official OTS Regulatory or Thrift Bulletin interpreting such statutes or regulations, in an amount in excess of that permitted to federal savings associations and intends to continue to do so after January 1, 1990, must file a notice, return receipt requested, with the DOS regional director for the region in which the state savings association's principal office is located. The notice must contain the same information that is required to be included in a letter application filed pursuant to § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate. The notice must be received by the regional director no later than January 29, 1990.

(ii) A state savings association which is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of HOLA and which has filed notice with the FDIC pursuant to paragraph (c)(1)(i) of this section may continue the activities that are the subject of the 30-day notice in the amount set forth in the notice unless the FDIC notifies the state savings association to the contrary. No state savings association will be permitted to continue the activities at the level described in a notice filed pursuant to this section if it is determined that to do so poses a significant risk to the affected deposit insurance fund. A state savings association which is not in compliance with the fully phased-in capital standards as of December 29, 1989 must decrease the level of the activity to that allowed to a federal savings association in order

for continuation of the activity to be permissible.

(iii) Paragraph (c)(1) of this section shall not be read to require the divestiture by a state savings association of any asset it had on its books before August 9, 1989. A notice describing those assets is nevertheless required by this section if the assets are held in connection with the conduct of an activity in an amount that triggers notice under § 303.13(c)(1)(i).

(2) *Initiation of activities after December 29, 1989.* Any state savings association that intends to initiate activities of a type and in an amount described in paragraph (c)(1)(i) of this section must file a notice, return receipt requested, with the (DOS) regional director for the region in which the state savings association's principal office is located at least 60 days prior to the initiation of the level of the activity described in the notice. The notice must contain the same information required by § 303.13(b)(1). The regional director may request such other information as the regional director deems appropriate. A state savings association that files a 60-day notice may initiate the level of activity as described in its notice 60 days after the FDIC accepts the notice as complete, or 60 days after the FDIC accepts as complete the additional information, if any, that has been requested *provided that* the association is in compliance with the fully phased-in capital standards prescribed in section 5(t) of HOLA and *provided that* the FDIC does not, prior to that date, pose an objection to the association doing so. A state savings association may initiate the level of activity described in its notice prior to the expiration of the 60-day period if so notified. The continued conduct of the activities as described in the notice is conditioned upon the association's continued compliance with the fully phased-in capital standards and the FDIC's continued non-objection to those activities.

The 60-day period may be extended upon notice to the state savings association if the notice as received is incomplete or the notice raises issues that require additional information or time for analysis. If the 60-day period

is extended, the state savings association may begin the conduct of the activities only upon receipt of written notification to that effect. No state savings association will be permitted to initiate activities subject to this paragraph if it is determined that to do so would pose a significant risk to the affected deposit insurance fund.

(d) *Equity investments*—(1) *General*. No state savings association may directly acquire or retain any equity investment after August 9, 1989 of a type or in an amount that is not expressly authorized for federal savings associations by HOLA, regulations issued by OTS, official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS. Any state savings association which, as of August 9, 1989, had one or more such equity investments must file an application, return receipt requested, with the DOS regional director for the region in which the state savings association's principal office is located no later than 30 days from December 29, 1989. The application shall:

(i) Describe the obligor, type, amount, and book and market values of the equity investment;

(ii) Set forth the association's plans to comply with the requirements of section 28(c) of the FDI Act to divest the investment as quickly as prudently possible, but in any event not later than July 1, 1994;

(iii) Describe the anticipated gain or loss (anticipated or realized) from the sale of the investment and the impact thereof on the association's capital (including capital ratios before and after their sale);

(iv) Include a copy of a resolution by the board of directors, or board of trustees in the case of a mutual association, authorizing the filing of this submission; and

(v) Request the FDIC's permission to accomplish divestiture in accordance with said plans.

The regional director may request such additional information as the regional director deems appropriate. Upon review of the application and such additional information as requested, and at any time during the divestiture period thereafter, the FDIC may impose such conditions and requirements as it

deems appropriate in its sole discretion with regard to the divestiture of the equity investment, including requiring completion of divestiture in advance of July 1, 1994.

(2) *Service corporations*—(i) *General*. Section 303.13(d)(1) notwithstanding, a state savings association may acquire or retain an equity investment in a service corporation, provided that the service corporation's activities are limited solely to those expressly authorized by HOLA or any other statute, regulations issued by OTS, official OTS Regulatory or Thrift Bulletins, or any order or interpretation issued in writing by OTS for all service corporations owned by federal savings associations and provided that the investment in such service corporation does not exceed that permissible for a federal savings association pursuant to statute or regulation of OTS. If either of these two conditions does not exist, the state association must file a letter application under paragraph (d)(2)(ii) of this section with the DOS regional director for the region in which the state savings association's principal office is located requesting permission to acquire or retain the equity investment in the service corporation in question.

(ii) *Content and filing of application*. An application requesting permission to retain an equity investment in a service corporation in which a federal association could not invest that was held as of August 9, 1989 must be filed with the regional office no later than January 29, 1990. Approval of the acquisition or retention of an equity investment in a service corporation in which a federal association could not invest will not be granted if the state association is not in compliance with the fully phased-in capital standards prescribed by section 5(t) of HOLA. Consequently, no application to acquire or retain an equity investment in such a service corporation should be filed if a state association is not in compliance with these capital requirements. In addition, approval of the retention or acquisition of such investments will not be granted if the acquisition or retention is determined to pose a significant risk to the affected deposit insurance

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fund. If an application to retain an investment is denied, the state association must file a divestiture plan with the regional director requesting the FDIC's permission to accomplish divestiture in accordance with said plan.

The letter application required hereby should contain the information required by §303.13(b)(1), as it relates both to the service corporation and to its parent state savings association. In addition, the application should contain: A listing of the officers (contemplated officers) of the service corporation, a listing of any other shareholders of the service corporation (existing or prospective) and their respective holdings, and a listing of the locations (expected locations) of all of the offices of the service corporation. The regional director may request such other information as the regional director deems appropriate.

(e) *Corporate debt securities not of investment grade.* Notwithstanding anything to the contrary in §303.13, no state or federal savings association may, directly or through a subsidiary (other than a subsidiary that is a qualified affiliate), acquire or retain after August 9, 1989 any corporate debt security that is not of investment grade. Any state or federal savings association which, as of August 9, 1989, held corporate debt securities not of investment grade must divest those securities as quickly as can prudently be done, but in no event later than July 1, 1994. Any state or federal savings association that must divest corporate debt securities shall file an application with the DOS regional director for the region in which the state or Federal savings association's principal office is located not later than 30 days from December 29, 1990. The application shall:

(1) Describe the obligor, type, amount, and book and market values of the corporate debt securities;

(2) Set forth the state or federal association's plans to comply with the requirements of section 28(d) of the FDI Act to divest the securities as quickly as prudently possible, but in any event not later than July 1, 1994;

(3) Describe the gain or loss (anticipated or realized) from the sale of the securities and the impact thereof on the association's capital (including

capital ratios before and after the sale);

(4) Include a copy of the resolution by the board of directors, or the board of trustees in the case of a mutual association, authorizing the filing of this submission; and

(5) Request the FDIC's permission to accomplish divestiture in accordance with said plans.

The regional director may request such additional information as the regional director deems appropriate. Upon review of the application and such additional information as requested, and at any time during the divestiture period thereafter, the FDIC may impose such conditions and requirements as it deems appropriate in its sole discretion with regard to the divestiture of the debt securities, including requiring completion of divestiture in advance of July 1, 1994.

(f) *Notice of acquisition or establishment of a subsidiary or the conduct of new activities through a subsidiary.* (1) No insured savings association may establish or acquire a subsidiary, or conduct any new activity through a subsidiary, without providing the DOS regional director for the region in which the insured savings association's principal office is located prior notice of the association's intent to do so. Notice must be sent return receipt requested and be received by the regional director at least 30 days prior to the establishment or acquisition of the subsidiary or the commencement of the new activity. The notice shall contain the same information required to be in a letter application filed pursuant to §303.13(b)(1) plus the following:

(i) A description of how the activities of the subsidiary will be funded;

(ii) The amount of the insured savings association's investment in the subsidiary and the form of the investment;

(iii) The percentage ownership the insured savings association will have in the subsidiary;

(iv) A listing of the other owners of the subsidiary if any; and

(v) In the case of the acquisition of an existing concern, the terms and conditions of the acquisition including an appraisal, assessment of value, or other substantiation of the purchase price

and operating statements for the previous three years (if applicable).

If the insured savings association's filing with the OTS under section 18(m)(1) of the FDI Act contains all of the information required, that filing may be submitted to the FDIC in satisfaction of this provision. In any case, the regional director may request such additional information as the regional director deems appropriate. In all such cases, the 30-day period will not begin to run until the response to the request for additional information is complete.

(2) Any Federal savings bank that was chartered prior to October 15, 1982 as a savings bank under state law, and any savings association that acquired its principal assets from such an institution, is not required to file prior notice in accordance with paragraph (f)(1) of this section.

(3) Any insured savings association that had one or more subsidiaries prior to August 9, 1989 must file a notice with the DOS regional director for the region in which the insured savings association's principal office is located within 30 days from December 29, 1989. The notice should set forth the name, location, and type of activity conducted by the subsidiary and the amount of the insured savings association's investment in the subsidiary.

(4) Section 303.13(f)(1) notwithstanding, an insured savings association may establish or acquire one or more subsidiaries whose sole purpose is to hold interests in real property acquired by the savings association that fit the description in § 303.13(a)(5)(ii) provided that the savings association files a written notice, return receipt requested, with the DOS regional director for the region in which the savings association's principal office is located indicating that the association intends to establish or acquire one or more subsidiaries that will be engaged solely in the disposition of such property. Notice must be received by the regional director at least 30 days prior to the establishment or acquisition of any such subsidiary. An association that has filed a notice pursuant to this paragraph may thereafter establish or acquire additional such subsidiaries provided that each time within 14 days after doing so the

association notifies the regional director in writing. The notice shall identify the savings association, give the date of the initial notice, identify the new subsidiary, and state the value of the property at the time it was transferred to the subsidiary.

(g) *Notice by Federal savings associations conducting grandfathered activities.* Any federal savings association authorized by section 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)) to make any investment or engage in any activity not otherwise generally authorized to federal savings association by section 5 of HOLA must file a notice with the DOS regional director for the region in which the federal savings association's principal office is located within 30 days after December 29, 1989 or within 30 days after the date the federal savings association is first able to rely upon section 5(i)(4) of HOLA as a result of the acquisition of an association that is covered by such section. The notice should briefly describe the activity or investment.

(h) *Delegations.* The authority to act on applications and notices filed pursuant to § 303.13, and to make any and all determinations called for in regard to the same, is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the regional director or deputy regional director.

(Approved by the Office of Management and Budget under control number 3064-0104)

[54 FR 53548, Dec. 29, 1989, as amended at 55 FR 38042, Sept. 17, 1990; 58 FR 64458, Dec. 8, 1993; 59 FR 52667, Oct. 19, 1994]

§ 303.14 Change in senior executive officer or board of directors.

(a) *Definitions.* For the purposes of this section:

(1) The term *individual* means any natural person, as well as any other entity and/or its employees substituted for such natural person.

(2) The term *insured nonmember bank* means any bank, including any foreign bank having an insured branch the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act, which is not a

member of the Federal Reserve System. The term does not include any institution chartered by the Comptroller of the Currency, any branch licensed by the Comptroller of the Currency, any District bank, or any federal savings bank.

(3) The term *senior executive officer* means any individual who exercises significant influence over, or participates in, major policymaking decisions of an insured nonmember bank, without regard to title, salary, or compensation. The term includes, but is not limited to, the following positions: president, chief executive officer, chief managing official (in an insured state branch of a foreign bank), chief operating officer, chief financial officer, chief lending officer, or chief investment officer. The term also includes employees of entities retained by an insured nonmember bank to perform such functions in the insured nonmember bank, when such firm is hired in lieu of directly hiring the individuals.

(4) The term *troubled condition* means any insured nonmember bank that:

(i) Has been assigned a composite rating by the FDIC of 4 or 5 under the Uniform Financial Institutions Rating System, or, in the case of an insured state-licensed branch of a foreign bank (*State branch*), an equivalent rating;

(ii) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(iii) Is subject to a written agreement which requires action to improve or maintain the safety and soundness of the institution and which is issued by either the FDIC or by the appropriate state banking authority, a cease and desist order issued by either the FDIC or the appropriate state banking authority, a cease and desist order or proceeding initiated by either the FDIC or the appropriate state banking authority, or a capital directive issued by either the FDIC or the appropriate state banking authority; or

(iv) Is informed in writing by the DOS regional director of the region in which the institution is located (*appropriate regional director*) or his or her designee, based on a visitation, examination, or report of condition, that it has been designated a *troubled institution* for the purposes of § 303.14.

(b) *Prior Notice Requirement.* An insured nonmember bank shall give the FDIC written notice at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors (or a member of the board of trustees in an insured nonmember bank held in a mutual form of ownership) or the employment or change in responsibilities of any individual to a position as a senior executive officer if:

(1) The bank has been chartered or the insured state branch has been licensed less than two years;

(2) Within the two years preceding the proposed addition or employment;

(i) The insured nonmember bank or any of its parents has undergone a change in control which required a notice under section 7(j) of the Federal Deposit Insurance Act or regulations issued pursuant to that statute; or

(ii) The insured nonmember bank has undergone a transaction subject to section 3 of the Bank Holding Company Act or section 10 of the Home Owners Loan Act or regulations issued pursuant to either of those statutes;

(3) The insured nonmember bank is not in compliance with the minimum capital requirements applicable to it and which are imposed by 12 CFR part 325 or by other regulatory action of the FDIC or the appropriate state banking authority; or

(4) The insured nonmember bank is otherwise in a troubled condition.

In the case of the addition of a member of the board of directors or a change in senior executive officer in a foreign bank having an insured State branch, the notice requirement shall not apply to such additions and changes in the foreign bank parent, but only to changes in senior executive officers in the State branch. The notice requirement also does not apply in the case of an advisory director who is not elected by the shareholders of the bank or any of its parents, who is not authorized to vote on matters before the board of directors, and who provides solely general policy advice to the board of directors.

(c) *Procedures for notice of proposed change in Director or Senior Executive Officer*—(1) *Filing and acceptance.* Notices shall be filed with the appropriate

regional director and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, as prescribed in the designated FDIC form, subject to the authority of the regional director or his or her designee to require additional information. Each individual on whose behalf the notice is filed must attest to the validity of the information filed which pertains to that individual. At the option of the individual, the information may be forwarded to the regional director by the individual; however, in such cases, the insured nonmember bank must file a notice to that effect. The 30-day notice period will begin to run on the date all required information is received by the appropriate regional director. The bank submitting the notice shall be notified of the date on which all such required information is received and the notice is accepted for processing.

(2) *Waiver of prior notice requirement—*

(i) *Procedure for obtaining.* Parties may petition the appropriate regional director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the bank or the public interest. Any waiver shall not affect the authority of the FDIC to issue a notice of disapproval within 30 days of the waiver.

(ii) *Election of directors.* In the case of the election of a new member of the board of directors at a meeting of the shareholders of an insured nonmember bank, such waiver is hereby granted, but a completed notice must be filed with the appropriate regional director within 48 hours of the election.

(3) *Notice of intent not to disapprove.* A proposed director or senior executive officer may begin service before the expiration of the 30-day period if the FDIC notifies the bank and the individual in writing of the FDIC's intention not to disapprove the proposed addition or employment.

(4) *Commencement of service.* A proposed senior executive officer or director may begin service upon the expiration of the 30-day period following acceptance of a complete notice, unless

the FDIC issues a notice of disapproval before the end of the 30-day period.

(d) *Notice of disapproval.* The FDIC may disapprove the individual's serving as a director or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the depositors of the bank or in the best interests of the public to permit the individual to be employed by, or associated with, the bank. The notice of disapproval will advise the parties of their rights of appeal.

(e) *Delegations.* The authority to issue notices of disapproval or notices of intent not to disapprove under this section; to grant waivers of the prior notice requirement; to determine the informational adequacy of a notice; to designate an insured nonmember bank as a troubled institution; and to determine when the 30-day period begins to run is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the regional director or deputy regional director.

[54 FR 53042, Dec. 27, 1989 as amended by 59 FR 52667, Oct. 19, 1994]

§ 303.15 Mutual-to-stock conversions of mutually owned state-chartered savings banks.

(a) *Prior notice requirement.* In addition to complying with the substantive requirements in § 333.4 of this chapter, an insured state-chartered mutually owned savings bank that proposes to convert from mutual to stock form shall file with the FDIC a notice of intent to convert to stock form and copies of all documents filed with state and federal banking and/or securities regulators in connection with the proposed conversion. An institution that is in the process of converting to stock form that has filed a proposed stock conversion application with the applicable state and federal regulators (or otherwise has initiated a stock conversion) prior to the effective date of this section shall file the required materials with the FDIC as soon as practicable. An insured mutual savings bank chartered by a state that does not

require the filing of application materials to convert from mutual to stock form that proposes to convert to the stock form shall notify the FDIC of the proposed conversion and provide the materials requested by the FDIC.

(b) *Content and filing of notice*—(1) *Content of notice.* The notice required to be filed under paragraph (a) of this section shall provide a description of the proposed conversion and include a copy of all notices or applications concerning the proposed conversion, including all attachments or appendices thereto, that have been filed with any state and federal banking and/or securities regulators. Copies of all agreements entered into as part of the mutual-to-stock conversion between the institution, its officers, directors/trustees and any other institution and/or its successors also must be provided.

(2) *Filing of notice.* Notices shall be filed with the regional director (DOS) in the region in which the institution seeking to convert is headquartered at the same time as the conversion application materials are filed with the institution's primary state regulator.

(c) *Review by FDIC.* (1) The FDIC shall review the materials submitted by the institution seeking to convert from mutual to stock form. The FDIC, in its discretion, may request any additional information it deems necessary to evaluate the proposed conversion and the institution shall provide such information to the FDIC expeditiously. Among the factors to be reviewed by the FDIC are:

(i) The use of the proceeds from the sale of stock, as prescribed in the business plan;

(ii) The adequacy of the disclosure materials;

(iii) The participation of depositors in approving the transaction;

(iv) The form of the proxy statement required for the vote of the depositors/members on the conversion;

(v) Any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be obtained by officers and directors/trustees of the bank in connection with the conversion;

(vi) The adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of deter-

mining the price of the shares of stock to be sold;

(vii) The process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders;

(viii) The nature and apportionment of stock subscription rights; and

(ix) The bank's plans to fulfill its commitment to serving the convenience and needs of its community.

(2) In reviewing the materials required to be submitted under this section, the FDIC will take into account the extent to which the proposed conversion conforms with the various provisions of the mutual-to-stock conversion regulations of the Office of Thrift Supervision (12 CFR Part 563b), as currently in effect at the time the FDIC reviews the required materials related to the proposed conversion. Any non-conformity with those provisions will be closely scrutinized. Conformity with the OTS requirements, however, will not be sufficient for FDIC regulatory purposes if the FDIC determines that the proposed conversion would pose a risk to the institution's safety and soundness, violate any law or regulation or present a breach of fiduciary duty.

(d) *Notification of completed filing of materials.* The FDIC shall notify the institution when all the required materials related to the proposed conversion have been filed with the FDIC and the notice is thereby complete for purposes of computing the time periods designated in paragraphs (e) and (g) of this section.

(e) *Notice of intent not to object.* If the FDIC determines, in its discretion, that the proposed conversion would not pose a risk to the institution's safety and soundness, violate any law or regulation or present a breach of fiduciary duty, then the FDIC shall issue to the bank seeking to convert, within 60 days of receipt of a complete notice of proposed conversion or within 20 days after the last applicable state or other federal regulator has acted on the proposed conversion, whichever is later, a notice of intent not to object to the proposed conversion. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

(f) *Letter of objection.* If the FDIC determines, in its discretion, that the proposed conversion poses a risk to the institution's safety and soundness, violates any law or regulation or presents a breach of fiduciary duty, then the FDIC shall issue a letter to the institution stating its objection(s) to the proposed conversion and advising the institution that the conversion shall not be consummated until such letter is rescinded. A copy of the letter of objection shall be furnished to the institution's primary state regulator and any other state or federal banking and/or securities regulator involved in the conversion. The letter of objection shall advise the institution of its right to petition the FDIC for reconsideration under §303.6(e). Such action shall not, in any way, prohibit the FDIC from taking any other action(s) that it may deem necessary.

(g) *Consummation of the conversion.* An institution may consummate the proposed conversion upon either:

(1) The receipt of a notice of intent not to object; or

(2) The expiration of the 60-day period following acceptance of a complete notice by the FDIC or the 20-day period after the last applicable state or other federal regulator has acted on the proposed conversion, whichever is later, unless the FDIC issues a notice of objection before the end of that period and, in which case, the conversion shall not be consummated until such letter is rescinded. The FDIC may, in its discretion, extend by written notice to the institution the initial 60-day period by an additional 60 days.

[59 FR 61245, Nov. 30, 1994]

PART 304—FORMS, INSTRUCTIONS AND REPORTS

Sec.

- 304.1 Purpose and scope.
- 304.2 Forms and instructions—general.
- 304.3 Certified statements.
- 304.4 Reports of condition and income.
- 304.5 Other forms.
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APPENDIX A TO PART 304—LIST OF FORMS

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1817, 1818, 1819, 1820; Public Law 102-242, 105 Stat. 2251 (12 U.S.C. 1817 note).

SOURCE: 51 FR 36684, Oct. 15, 1986, unless otherwise noted.

§ 304.1 Purpose and scope.

This part is issued under section 552 of title 5 of the United States Code (5 U.S.C. 552), which requires that each agency shall make available to the public information pertaining to the description of forms available or the places at which forms may be obtained, and instructions as to the scope and content of reports and other submissions. The forms mentioned in this part are limited to those which are not already mentioned elsewhere within the rules and regulations of the Federal Deposit Insurance Corporation. However, appendix A to this part lists forms required by the FDIC and identifies the sections of FDIC's regulations where the forms are referenced.

[51 FR 36684, Oct. 15, 1986, as amended at 62 FR 4896, Feb. 3, 1997]

§ 304.2 Forms and instructions—general.

Necessary forms with their related instructions to be used in connection with applications, reports, and other submissions can be obtained from FDIC regional offices—Division of Supervision. The FDIC regional offices are listed in the directory of the FDIC Law, Regulations and Related Acts looseleaf service, published by the FDIC. A listing of FDIC forms can also be obtained by writing to the FDIC, Division of Supervision, 550 17th Street, NW, Washington, D.C. 20429. The forms are also available in the FDIC Public Information Center at 801 17th Street, NW, Washington, D.C. 20429.

[62 FR 4896, Feb. 3, 1997]

§ 304.3 Certified statements.

The certified statements required to be filed by insured institutions under the provisions of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817), as amended, shall be filed in accordance with part 327 of this chapter. The applicable forms are Form 6420/07A—Form 6420/07H which show the computation of the semiannual assessment due to the Corporation from an insured depository institution. As provided for in part 327 of this chapter, the